

EXHIBIT D

HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL’S EYES ONLY

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

Nike, Inc.,

Plaintiff,

v.

StockX LLC,

Defendant.

Case No. 1:22-cv-000983-VEC

REBUTTAL EXPERT REPORT OF JEFFERY A. STEC, Ph.D.

June 2, 2023

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HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL’S EYES ONLY**I. Purpose**

I have been retained as an expert in this case by counsel for Nike, Inc. (“Nike” or “Plaintiff”). Nike has sued StockX LLC (“StockX” or “Defendant”) for trademark infringement, false designation of origin, unfair competition, trademark dilution, counterfeiting, and false advertising under the Lanham Act; injury to business reputation and dilution under state law; and trademark infringement and unfair competition under common law.¹ StockX claims that Nike and StockX do not compete, that there is no evidence of diverted sales, and that Nike benefits from StockX’s platform and actions.² In support of these claims, StockX has submitted the Expert Report of Robert L. Vigil, Ph.D. (the “Vigil Report”) and the Expert Report of Catherine Tucker (the “Tucker Report”), both dated May 5, 2023.³

I have been asked by Nike’s counsel to review and respond to certain economic opinions and analyses set forth in the Vigil and Tucker Reports. As part of my analysis, I examined data, documents, and deposition testimony provided in this case, as well as the Vigil and Tucker Reports.⁴

To form my opinions, I have considered the information listed in Exhibit 3 or referenced in the text, footnotes, and attached exhibits of this report. I have also relied on my education, professional judgment and expertise gathered over twenty-two years of estimating damages and applying economics and finance to intellectual property matters. The following report summarizes my current opinions. The information in this report is based upon discovery to date and the information that is currently available. To the extent additional information is produced or otherwise becomes available after the date of this report, I may supplement this report, if warranted, based on any such information. If called as an expert witness in this matter, I anticipate that my testimony may concern the matters addressed below. Additionally, I anticipate that I may comment on materials relating to economic issues that may later become available. In connection with my testimony, I may present visual aids and demonstratives that illustrate my

¹ First Amended Complaint, filed May 25, 2022, in Civil Action No. 1:22-cv-000983-VEC (“First Amended Complaint”), pp. 59-68.

² Expert Report of Robert L. Vigil, Ph.D. dated May 5, 2023 (“Vigil Report”), pp. 2-4 and 23-57.

³ Expert Report of Robert L. Vigil, Ph.D. dated May 5, 2023, and Expert Report of Catherine Tucker dated May 5, 2023 (“Tucker Report”).

⁴ Exhibit 3 contains a list of the information considered.

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analysis set forth herein (and in any subsequent reports I issue in this matter). I have not yet prepared any such visual aids or demonstratives.

II. Professional and Educational Background

I am a Managing Director with Berkeley Research Group, LLC (“BRG”). I am also the leader of its Intellectual Property practice and co-leader of its Economics and Damages community. BRG is a leading global strategic advisory and expert consulting firm that provides independent advice, data analytics, valuation, authoritative studies, expert testimony, investigations, transaction advisory, restructuring services, and regulatory and dispute consulting to corporations, financial institutions, government agencies, major law firms, and regulatory bodies around the world.

I have served as a consultant to a wide variety of clients on matters involving economic, financial, and statistical analysis and modeling for the purpose of interpreting and projecting data and evaluating the impact of business decisions, transactions, and economic events. I have also served as an expert witness or consultant in a wide range of litigation matters, including patent, copyright, trademark infringement, false advertising and trade secret misappropriation litigation. While the issues have varied from case to case, many have included an analysis and evaluation of company-specific as well as industry-wide data for the purpose of determining the extent of economic damages.

I received Ph.D. and Master’s degrees in Economics from the Ohio State University. I received Bachelor’s degrees in Philosophy and Psychology from Cornell University and in Economics with a Math Minor from the University of Illinois-Chicago. I am a member of various professional organizations, including the American Economic Association, the American Association of Public Opinion Research, and the Licensing Executives Society, among others.

My curriculum vitae, which includes the publications and presentations I have authored, is attached hereto as Exhibit 1. A list of the cases in which I have testified is attached hereto as Exhibit 2. BRG is being compensated on a rate times hours basis for the work my staff and I perform. My current rate is \$795 per hour. BRG’s compensation does not depend in any way on the outcome of this litigation.

HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL’S EYES ONLY**III. Background****A. Parties****1. Nike, Inc. (“Nike” or “Plaintiff”)**

Plaintiff Nike, Inc. is a corporation organized and existing under the laws of the State of Oregon, with its principal place of business in Beaverton, Oregon.⁵ The company was founded as Blue Ribbon Sports in 1964 by Bill Bowerman and Phil Knight and became Nike in 1978.⁶ Nike is the world's leading designer, marketer, and distributor of authentic athletic footwear, apparel, equipment, and accessories for a wide variety of sports and fitness activities.⁷ Nike operates an omnichannel strategy which unites the customer experience across both brick-and-mortar, web, and mobile device experiences.⁸ Through its direct operations, Nike sells its products through 344 Nike-operated U.S. retail stores (including Nike Brand factory stores, Nike Brand in-line stores, and Converse stores),⁹ its Nike.com website, and its Nike SNKRS platform located at <https://www.nike.com/launch>.¹⁰ Nike also sells its goods through other authorized distribution channels, such as Dick’s Sporting Goods,¹¹ Foot Locker,¹² and Nordstrom.¹³ Listed on the New York Stock Exchange since 1980,¹⁴ for its fiscal year 2022, the company earned \$12.2 billion of footwear revenue in North America and total revenues of \$18.4 billion in North America.¹⁵

2. StockX LLC (“StockX” or “Defendant”)

Defendant StockX LLC is organized as a Michigan LLC, with its principal place of business in Detroit, Michigan.¹⁶ StockX LLC is an online marketplace and reseller of sneakers, streetwear, electronics, luxury handbags, and other collectibles.¹⁷ StockX is not an authorized

⁵ First Amended Complaint, at p. 8.

⁶ <https://www.britannica.com/topic/Nike-Inc>.

⁷ <https://www.linkedin.com/company/nike/>.

⁸ <https://www.shopify.com/enterprise/omni-channel-retail-strategy>.

⁹ NIKE, Inc. SEC form 10-K for the fiscal year ended May 31, 2022, at p. 2.; and <https://www.nike.com/retail/directory>.

¹⁰ <https://www.nike.com/>; and <https://www.nike.com/launch>.

¹¹ <https://www.businessinsider.com/nikes-pushing-direct-sales-consumers-love-foot-locker-dicks-2023-1>.

¹² <https://www.businessinsider.com/foot-lockers-new-deal-nike-wont-get-them-hottest-sneakers-2023-3>.

¹³ <https://www.nordstrom.com/brands/nike>.

¹⁴ <https://www.britannica.com/topic/Nike-Inc>.

¹⁵ NIKE, Inc. SEC form 10-K for the fiscal year ended May 31, 2022, at p. 85.

¹⁶ Answer to First Amended Complaint (“Answer”), dated June 6, 2022, at p. 15. *See also*, First Amended Complaint, at p. 8.

¹⁷ <https://stockx.com/>; and Answer at p. 15.

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Nike retail account and Nike does not sell its products to StockX.¹⁸ StockX is the owner of <https://stockx.com> (the “StockX Website”) and the StockX mobile application (the “StockX App”) where it conducts its online commercial activities.¹⁹ StockX was launched in 2016 in Detroit and since then has had more than 12 million buyers and 1.5 million sellers who have consummated more than 40 million product trades on the platform.²⁰ StockX states that it requires that all products listed on its platform are what it considers “deadstock.”²¹ StockX uses the term “deadstock” to mean that the products offered for sale on its platform are brand new, unworn, in flawless condition, and include the original packaging and/or relevant accessories.²² StockX’s platform offers prospective buyers the opportunity to view historical price information, place an offer at a set price for an item (“bid”), or purchase an item at the available for sale price (“ask”).²³

B. StockX sales of Nike products

StockX is not an authorized Nike retail account and Nike does not sell its products to StockX.²⁴ Nevertheless, StockX is best known for its sneakers segment and according to its Big Facts Report, “the same five names – Nike, Jordan Brand, adidas, New Balance, and Converse, once again held the top five spots on StockX’s list of best-selling sneaker brands in 2022.”²⁵ As of 2019, sneakers accounted for about 75% of StockX’s total sales.²⁶ In fact, from Q1 2020 through Q3 2022, according to StockX’s experts, StockX generated approximately \$1.629 billion in total worldwide revenues, including \$972 million in revenues from trades involving Nike and Jordan products and Nike-branded Vault NFTs.²⁷ This, according to StockX’s expert, represents 60% of StockX’s total sales over this period.

¹⁸ Answer at p. 18. *See also*, First Amended Complaint at p. 18.

¹⁹ Answer at p. 15. *See also*, First Amended Complaint at p. 8.

²⁰ <https://stockx.com/about/sx-market-insights/big-facts-current-culture-index-2023/>. *See also*, <https://stockx.com/news/worlds-first-online-consumer-stock-market-of-things-stockx-launches-today/>.

²¹ <https://stockx.com/help/en-GB/articles/Are-shoes-sold-on-StockX-considered-deadstock>.

²² <https://stockx.com/help/en-GB/articles/Are-shoes-sold-on-StockX-considered-deadstock>.

²³ <https://stockx.com/help/en-GB/articles/What-is-the-difference-between-sell-now-and-an-ask>; and <https://stockx.com/help/articles/What-is-the-difference-between-placing-a-bid-and-using-buy-now>.

²⁴ Answer at p. 18. *See also*, First Amended Complaint at p. 18.

²⁵ <https://stockx.com/about/sx-market-insights/big-facts-current-culture-index-2023/>.

²⁶ <https://www.cnn.com/2019/06/26/stockx-a-stock-exchange-for-sneakers-is-now-worth-1-billion.html>.

²⁷ Vigil Report, p. 58 and Exhibit 5A and Exhibit 5B.

HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL’S EYES ONLY**C. Retail market for athletic shoe/sneaker**

The U.S. Retail Market for Athletic Shoes and Sneakers industry includes retailers that sell shoes through both traditional brick-and-mortar outlets, online websites, and by mail order.²⁸ The top companies in the retail market for athletic shoes and sneakers include brands which have their own store locations and online sites like Asics, adidas, Converse (owned by Nike), Nike, Puma, Skechers, and Under Armour, and retailers like Designer Brands, Dick’s Sporting Goods, Famous Footwear, Foot Locker, Hibbett Sports, and Shoe Carnival.²⁹ The market also includes online shoe sales from vendors including Amazon.com, Zappo’s (owned by Amazon.com), and large traditional department stores like Macy’s.³⁰ The U.S. Athletic Shoe Market is a sub-sector of the broader U.S. Sporting Goods Market, which according to McKinsey, had a decline in sales for the first three quarters of 2022 as compared to 2021, down 6.1%.³¹ As of 2023, the industry had revenue of \$20.4 billion and was expected to grow at an annual growth rate of 1.2% from 2023 to 2028.³²

IV. Summary of Opinions

I have reviewed the relevant opinions set forth by Dr. Vigil in the Vigil Report and the relevant opinions set forth by Dr. Tucker in the Tucker report. It is my opinion that certain of Dr. Vigil’s analyses and conclusions on harm to Nike are flawed and unreliable. Dr. Vigil failed to consider StockX as a retailer in the market for sales of Nike products; failed to support his opinion that it is highly unlikely StockX diverted sales from Nike; and ignored some of the harm and negative economic impact that StockX has on Nike and its consumers.³³ It is also my opinion that Dr. Tucker also failed to consider StockX as a retailer in the market for sales of Nike products and the effects that StockX’s allegedly false advertising claims and sale of

²⁸ Thomas, Bridgette. “*The Retail Market for Shoes in the US Industry Report (OD6143)*.” IBISWorld. June 2021, p. 4.

²⁹ <https://footwearnews.com/business/nike-stops-selling-9-retailers-1203045746/>; and <https://www.statista.com/chart/13470/athletic-footwear-sales/>.

³⁰ Thomas, Bridgette. “*Online Shoe Sales in the US Industry Report (OD5093)*.” IBISWorld. May 2023, pp. 7 and 25.

³¹ https://www.mckinsey.com/~media/mckinsey/industries/retail/our%20insights/sporting%20goods%202023%20the%20need%20for%20resilience%20in%20a%20world%20in%20disarray/sg-report-2023_final.pdf at pp. 24-25.

³² Thomas, Bridgette. “*Athletic Shoe Stores in the US Industry Report (OD4605)*.” IBISWorld. March 2023, p. 6.

³³ I understand that Nike has engaged other experts that are addressing other harms and negative impacts StockX has on Nike and its consumers.

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counterfeit “Nike” merchandise likely had on both StockX’s and Nike’s performance in the market.

A summary of my critique of the Vigil Report is provided immediately below, with a complete discussion contained in Section V of my report.

- Dr. Vigil failed to consider the basic economics of competition and the fact that StockX sells the same products and styles that Nike sells on Nike.com at the same time, sometimes even before Nike releases the product.
- Dr. Vigil failed to consider that, although it is not an authorized Nike retail partner, StockX is a retailer of Nike shoes in the market for sales of Nike shoes.
- Dr. Vigil assumed that it is highly unlikely StockX diverted sales from Nike, but this assumption ignored the actual marketplace realities. Because StockX concurrently sells the same shoes that are sold by Nike and its authorized retail partners and sells certain Nike shoes on its platform before Nike itself releases the product, Dr. Vigil failed to recognize the likelihood that StockX has diverted sales from Nike and its authorized retail partners.
- Dr. Vigil asserted that Nike benefits from the StockX platform and StockX’s conduct, but failed to consider some of the harm and negative economic impact that StockX’s platform has on Nike and its consumers.

A summary of my critique of the Tucker Report is provided immediately below, with a complete discussion contained in Section VI of my report.

- Dr. Tucker failed to consider the basic economics of competition and the fact that StockX sells the same products and styles that Nike concurrently sells on Nike.com or the SNKRS platform, sometimes before Nike itself launches the product.
- Dr. Tucker failed to consider the effects that StockX’s false advertising claims and sale of counterfeit “Nike” merchandise had on Nike in the market.

HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL’S EYES ONLY**V. Rebuttal of the Expert Report of Robert Vigil, Ph.D.****A. Dr. Vigil failed to consider StockX as a retailer of Nike shoes.**

According to Dr. Vigil, “the parties are not direct competitors,” because Nike engages in the primary sale of its products, whereas StockX provides a marketplace where consumers can engage in secondary resale of Nike products.”³⁴ Dr. Vigil also asserts that they do not compete based on Nike’s SEC filings and analyst calls as well as statements by StockX that it does not consider Nike to be a competitor.³⁵ Dr. Vigil did not consider any other information to determine that there is no competition between Nike and StockX. For example, Dr. Vigil did not consider that StockX operates as a retailer in the Retail Athletic Shoe/Sneaker Market.

While Dr. Vigil makes the conclusory statement that Nike “engages in the primary sale of its products,” and StockX provides for “secondary resale” of those products, he does not explain how, from an economic perspective, this shows that the parties operate in separate markets.³⁶ Likewise, while Dr. Vigil also relies on who Nike considers as primary competitors as a manufacturer and seller of footwear and apparel and who StockX considers as primary competitors in the resale marketplace, he ignores the marketplace reality that the parties both operate as retailers for the same products, at the same time, in the Retail Athletic Shoe/Sneaker Market.³⁷ Nor does Dr. Vigil account for the fact that StockX may compete with other Nike authorized retail partners by selling what it calls “deadstock” sneakers, i.e., brand new, unworn, in flawless condition, and which include the original packaging and/or relevant accessories. As discussed in detail below, Dr. Vigil’s failure to consider the basic economics of competition, including the fact that StockX sells the same products and styles that Nike sells, sometimes before Nike even releases the product, or that both Nike and StockX are retailers of Nike shoes renders his opinions unreliable.

1. The economics of competition

Dr. Vigil’s assertion that Nike and StockX do not compete is at odds with the literature on the economics of competition and with the marketplace realities of how StockX and Nike

³⁴ Vigil Report, pp. 23-24.

³⁵ Vigil Report, pp. 23-24 and 36-40.

³⁶ Vigil Report, p. 23.

³⁷ Vigil Report, pp. 23-24 and 36-37.

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operate in the market. In this section, I briefly discuss the economics of competition with the goal of responding to Dr. Vigil’s claim that the distinction between primary and secondary markets means that Nike and StockX do not compete. As explained below, because Nike and StockX offer the same products at the same time to consumers in the Retail Athletic Shoe/Sneaker Market, the parties likely exert competitive constraints on each other. As such, Dr. Vigil’s conclusion to the contrary is unreliable.

Competition is a central topic in the study of markets; when firms compete with each other, it leads to lower prices, better quality goods, and more innovation.³⁸ Competition is crucial to a well-functioning economy. For that reason, identifying competing firms and measuring the extent of competition have been subjects of substantial analysis by economists and social scientists.³⁹ On the supply side, identifying sellers who compete against each other requires defining and identifying the market for the goods and services under consideration,⁴⁰ also known as “the relevant market.” Economists have proposed a wide variety of methods and techniques to identify the relevant market and the sellers and products within it.⁴¹ Among this array of methods, I discuss *demand substitutability* – a key concept in the economics of competition that is present here, where Nike and StockX often sell the same products at the same time in the Retail Athletic Shoe/Sneaker Market.

Demand substitutability refers to the extent to which products sold by competing firms are viewed as interchangeable from the viewpoint of consumers.⁴² When making a purchase decision, a consumer must evaluate which product and brand to buy, and from which seller. If demand is highly substitutable, multiple sellers offer the same or closely similar product.⁴³ The

³⁸ Heather Boushey and Helen Knudsen, “The Importance of Competition for the American Economy” July 9, 2021. Available at: <https://www.whitehouse.gov/cea/written-materials/2021/07/09/the-importance-of-competition-for-the-american-economy/>.

³⁹ Stigler, G.J. (2008). Competition. In: The New Palgrave Dictionary of Economics. Palgrave Macmillan, London. https://doi.org/10.1057/978-1-349-95121-5_524-2.

⁴⁰ “The purpose of the market definition is to identify the sellers and buyers who establish the price for the product in the area.” See Stigler, George J., and Robert A. Sherwin. “The Extent of the Market.” The Journal of Law & Economics, vol. 28, no. 3, 1985, pp. 555–85. JSTOR, <http://www.jstor.org/stable/725346>. Accessed 23 May 2023.

⁴¹ For a brief review of techniques to identify the relevant market, see “Other Public Policy Factors Affecting Competition.” Motta, Massimo. Competition Policy: Theory and Practice. Cambridge University Press, 2004.

⁴² See “Substitutability” Concurrences Antitrust Publications and Events. Available at: <https://www.concurrences.com/en/dictionary/Substitutability>.

⁴³ A related concept is supply substitutability: the extent to which new sellers can enter the market and substitute for the incumbents. See “Supply Substitutability v. Entry That Constrains Market Power.” Motta, Massimo. Competition Policy: Theory and Practice. Cambridge University Press, 2004, p. 129.

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consumer can choose from multiple options and switch across options with little effort and cost. To make the sale, each seller must therefore compete with each other,⁴⁴ such as by offering the best price or the best sales service.

For a given market and product, demand substitutability is influenced by a variety of factors, including the physical characteristics and usage of products under consideration. For example, bottled water and carbonated soft drinks share the same usage purpose – to quench one’s thirst. Historically, American consumers had consumed more soft drinks than bottled water. This trend has reversed since 2016, when consumers increasingly switched from soft drinks to bottled water, which is perceived to be healthier.⁴⁵ In this example, similar usage (to quench thirst) leads to a high degree of demand substitutability between the two products. An analysis of competition in the soft drinks market must therefore consider sellers of bottled water.

In the present case, Nike and StockX offer the same Nike shoes. A consumer seeking to purchase a new pair of Nike shoes can do so either directly through Nike or through the StockX platform because StockX purportedly guarantees or verifies that every Nike shoe sold on its platform is new, unworn, and authentic.⁴⁶ As shown in Section V.A.2, many lines of Nike shoes are concurrently available for sale through both Nike and StockX. Dr. Vigil failed to consider if any of the listings of Nike shoes on the StockX platform and concurrently offered on Nike.com led Nike to lose out on additional sales of those shoes. This is particularly true when StockX.com is offering these shoes below the retail price, as is sometimes the case.⁴⁷

⁴⁴ Demand substitutability is a fundamental element in virtually all economic models of competition. To study competition between two or multiple firms, economic models usually specify a demand curve where products sold by different firms are interchangeable, either perfectly or up to an extent. In the case of homogeneous goods, products are perfectly interchangeable: consumers view product sold by firm A as exactly the same as product sold by firm B. In the more realistic case of differentiated goods, products are interchangeable up to an extent, and the degree of interchangeability is determined by product characteristics. *See* Waldman, Don and Elizabeth Jensen, “Industrial Organization: Theory and Practice” 2013, Routledge, pp. 51, 418-419.

⁴⁵ “A significant portion of bottled water’s growth (30 percent since 2012) has come from people switching to bottled water from other less-healthy packaged drinks.” International Bottled Water Association, “Increased Consumer Demand for Bottled Water as a Healthy Alternative to Other Packaged Drinks.” May 17, 2022. Available at: <https://bottledwater.org/nr/increased-consumer-demand-for-bottled-water-as-a-healthy-alternative-to-other-packaged-drinks/>.

⁴⁶ As an example, the Nike Air Max 270, listed on Nike’s website as one of Nike’s bestsellers, is available for sale on both the Nike website (<https://www.nike.com/t/air-max-270-mens-shoes-KkLcGR/AH8050-100>) and on StockX (<https://stockx.com/nike-air-max-270-white-black>).

⁴⁷ *See* Exhibit 6.0.

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In the bottled water example, similar usage alone entailed that bottled water and soft drinks can be considered in the same competition realm. In the case of Nike and StockX, the parties offer for sale the same products. For that reason, demand for Nike shoes is likely to be substitutable between Nike and StockX.

In addition to ignoring this product substitutability, Dr. Vigil does not seem to be aware that StockX promotes and lists certain Nike products for sale even before those products are officially launched by Nike, which is shown Section V.A.2.b.⁴⁸ A consumer interested in buying upcoming Nike products could purchase them through StockX’s pre-launch listing, as StockX guarantees that such products are new, unworn, and “100% Verified Authentic.” At the official launch by Nike, that same consumer, having already purchased through StockX, is not likely to purchase the item again from Nike. In this way, the pre-launch availability of Nike products on StockX puts competitive pressure on Nike. Dr. Vigil’s failure to consider potential demand substitutability between products sold by Nike and products sold by StockX as retailers undermines his opinion that StockX and Nike operate in different “markets.”

2. StockX sells many of the same products Nike sells on Nike.com

Dr. Vigil’s opinion that StockX primarily offers a marketplace to sell “limited edition and/or collectible Nike sneakers” to “sneakerheads” ignores the marketplace reality that StockX sells many of the shoes that Nike also offers for sale, including many of Nike’s best-selling shoes. Instead, he focused only on the products StockX sells that are sold out or cannot be purchased directly from the manufacturer.⁴⁹ According to Dr. Vigil, “[c]onsumers who purchase Nike products from third party sellers on StockX and other secondary marketplace platforms ordinarily do not have the ability to buy those same products from Nike.”⁵⁰ Dr. Vigil failed to provide any support for his determination that consumers “ordinarily do not have the ability to buy those same products from Nike.”⁵¹

⁴⁸ An example is the Jordan 14 Retro Laney, which was available for sale on the StockX website since at least as early as May 23, 2023. The same product is not available for sale directly by Nike until May 27, 2023. *See* <https://stockx.com/air-jordan-14-retro-laney> and <https://www.nike.com/t/air-jordan-14-retro-shoes-NMk9nN/487471-407>.

⁴⁹ Vigil Report, pp. 23, 32-33.

⁵⁰ Vigil Report, p. 32.

⁵¹ Vigil Report, p. 32.

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To test Dr. Vigil’s opinion, I evaluated whether there are products that consumers could buy from either StockX or Nike by reviewing Nike’s website and the make and style of shoes that it has identified as the current best-selling shoes for men, women, and kids. Based on my review of Nike’s website as of June 1, 2023, there were 60 best-selling makes and styles of shoes for men and women and 42 for kids, which totals to 102 best-selling makes and styles of shoes.⁵² Using this list, I searched StockX’s website on June 1 and June 2, 2023 to see if its platform offered the same makes and styles of shoes. From this process, I identified numerous products that both StockX and Nike concurrently sell as of June 2, 2023.⁵³ I also identified several products that Nike intends to sell in the near future through my review of the “coming soon” tagged shoes within the new and upcoming shoe drops on Nike.com.⁵⁴ I searched StockX’s website on June 2, 2023 for the styles of the new and upcoming shoe drops from Nike and found that StockX already promoted and offered for sale these yet to be released shoes (*e.g.*, pre-releases) on its platform.⁵⁵ Each of the products I identified are discussed in detail below.

a. Shoes available for sale on both Nike.com and StockX

Based on the list of 102 styles and makes of the best-selling Nike shoes that were identified on Nike’s website as of June 1, 2023, I was able to identify that 71 of those shoes, or 69.6%, could also be found available for sale on StockX’s website as of June 2, 2023. These products included the same styles and at least one overlapping size that was also sold on Nike.com.⁵⁶ As discussed above, the products sold by StockX are “deadstock,” which means they are sold in the same new condition as the shoes sold by Nike.⁵⁷ In the figures below, I have provided examples of a couple of the products that I identified from the list of current best-selling shoes on Nike.com. I also included the listing on Nike.com and the corresponding listing on StockX.

⁵² See, <https://www.nike.com/w/best-shoes-3rauvz5e1x6z76m50znik1zy7ok>; and <https://www.nike.com/w/best-shoes-1onraz3aqegz76m50zy7ok>.

⁵³ See Exhibit 4.1.

⁵⁴ <https://www.nike.com/w/new-upcoming-drops-shoes-k0gkzy7ok>.

⁵⁵ See Exhibit 5.1 and Exhibit 6.0.

⁵⁶ See Exhibit 4.0. Seventy-one of the shoes shared one or more sizes in common with StockX, 58 shoes shared five or more sized in common with StockX, and 28 shoes shared all the sizes available in common with StockX.

⁵⁷ <https://stockx.com/help/articles/Are-shoes-sold-on-StockX-considered-deadstock>.

HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL’S EYES ONLY**Figure 1: Nike Air Force 1 '07 Style: CW2288-111⁵⁸**

Nike Air Force 1 '07
Men's Shoes
\$110

Select Size

M 5.5 / W 6.5	M 6.5 / W 7
M 6 / W 7.5	M 6.5 / W 8
M 7 / W 8.5	M 7.5 / W 9
M 8 / W 9.5	M 8.5 / W 10
M 9 / W 10.5	M 9.5 / W 11
M 10 / W 11.5	M 10.5 / W 12
M 11 / W 12.5	M 11.5 / W 13
M 12 / W 13.5	M 12.5 / W 14
M 13 / W 14.5	M 14 / W 15.5
M 15 / W 16.5	M 16 / W 17.5
M 17 / W 18.5	M 18 / W 19.5

4 interest-free payments of \$27.50 with Klarna [Learn More](#)

Add to Bag

Favorite

Nike Air Force 1 Low '07
White

544 Sold in Last 3 Days!

Size: All

Place Bid **Buy for \$98**

Sell for \$101 or Ask for More →

Last Sale: **\$87**
▼ - \$17 (-17%)

[View Asks](#) [View Bids](#) [View Sales](#)

StockX Verified Condition: New

Our Promise

Related Products

- Nike Air Force 1 '07 White (Women's)
Lowest Ask: **\$82**
Last Sale: \$90
- Nike Air Force 1 Low '07 White
Lowest Ask: **\$139**
Last Sale: \$132
- Nike Air Force 1 Low '07 Black White
Lowest Ask: **\$121**
Last Sale: \$174
- Nike Air Force 1 Low '07 White Black
Lowest Ask: **\$192**
Last Sale: \$355
- Nike Air Force 1 Low '07 White Ash
Lowest Ask: **\$145**
Last Sale: \$192

Product Details

Style: **315522-111/CW2288-111**
Colorway: **WHITE/WHITE**
Retail Price: **\$110**
Release Date: **10/4/2007**

Product Description
The Nike Air Force 1 Low White '07 features an all-white leather upper with a perforated toe box and Swoosh overlays. A Nike heel embroidery and white sole completes the design.
This Nike Air Force 1 Low White '07 originally released in 2007, but since it is an essential company to

Figure 2: Nike Air VaporMax 2021 FK Style: DH4084-100⁵⁹

Nike Air VaporMax 2021 FK
Men's Shoes
\$129.97 50% off 38% off

Select Size

6	6.5	7	7.5	8
8.5	9	9.5	10	10.5
11	11.5	12	12.5	13
14				

4 interest-free payments of \$32.49 with Klarna [Learn More](#)

Add to Bag

Favorite

This product is made with at least 20% recycled content by weight.

Nike Air VaporMax 2021 FK
White Black Metallic Silver

Price Currently Below Retail

Size: All

Place Bid **Buy for \$154**

Sell for \$117 or Ask for More →

Last Sale: **\$119**
→ 3%

[View Asks](#) [View Bids](#) [View Sales](#)

StockX Verified Condition: New

Our Promise

Related Products

- Nike Air VaporMax 2021 FK Black Metallic Silver
Lowest Ask: **\$83**
Last Sale: \$98
- Nike Air VaporMax 2021 FK White Metallic Silver
Lowest Ask: **\$88**
Last Sale: \$90
- Nike Air VaporMax 2021 FK White Black
Lowest Ask: **\$408**
Last Sale: \$400
- Nike Air VaporMax 2021 FK White Black Metallic Silver
Lowest Ask: **\$177**
Last Sale: \$176
- Nike Air VaporMax 2021 FK White Black Rumpus
Lowest Ask: **\$99**
Last Sale: \$117

Product Details

Style: **DH4084-100**
Colorway: **WHITE/BLACK/METALLIC SILVER/WHITE**
Retail Price: **\$250**
Release Date: **10/07/2021**

Product Description
The Nike Air VaporMax 2021 FK White Black Metallic Silver is a lightweight cushion shoe. Featuring 100% of this shoe is constructed from recycled materials. Its electric Flyknit upper, for example, is made from recycled parts.

⁵⁸ See <https://www.nike.com/t/air-force-1-07-mens-shoes-jBrhbr/CW2288-111>; and <https://stockx.com/nike-air-force-1-low-white-07>.

⁵⁹ See <https://www.nike.com/t/air-vapormax-2021-flyknit-next-nature-mens-shoes-NpTfFz/DH4084-100>; and <https://stockx.com/nike-air-vapormax-2021-fk-white-black-metallic-silver>.

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On its website, StockX reports the quantity that it has sold over the last twelve months for each style it carries. Based on this sales information, and the products that I have identified above, it appears that, as of June 2, 2023, StockX has sold at least 200,000 shoes within the last twelve months alone that were simultaneously offered by Nike for retail sale on Nike.com.⁶⁰ It follows that, contrary to Dr. Vigil’s assertion, these two parties operate as retailers within the same competitive market.

The decision by StockX to list and offer Nike products for sale on its website creates competitive pressure on the same Nike products sold directly by Nike. Based on my review of these products I have identified that many of the Nike products were available for sale on the StockX platform at prices below the retail price – StockX even has a flag “Price Currently Below Retail” to help its buyers notice those items more easily both when they are searching on StockX and when they open a specific item’s listing.⁶¹ According to the listings on StockX, there are hundreds of styles of Nike, Jordan, and Converse shoes that are being offered below their retail price.⁶² Dr. Vigil did not mention any of StockX’s listings of Nike products offered below their retail price. A rational consumer looking to purchase a pair of Nike shoes would be likely to consider the same new, unworn, shoes offered by StockX at a lower price, which could place competitive pressure on Nike. Dr. Vigil failed to consider these products; and, therefore, his determination that Nike and StockX do not compete because they operate in different markets is both flawed and unreliable.

b. StockX’s listings for Nike products sold before the Nike release date

Based on the research that I conducted above, I also found that StockX listed and is currently selling 15 of the 16 Nike shoes that Nike announced as an upcoming drop but had not yet launched as of June 1, 2023.⁶³ These “pre-release” shoes included Nike and Jordan brand

⁶⁰ See Exhibit 4.0.

⁶¹ As of the date of this report, many Nike products are being offered on the StockX platform with the flag “Price Currently Below Retail.” An example is the Nike Air Force 1 Low ’07 White, available at <https://stockx.com/nike-air-force-1-low-white-07>.

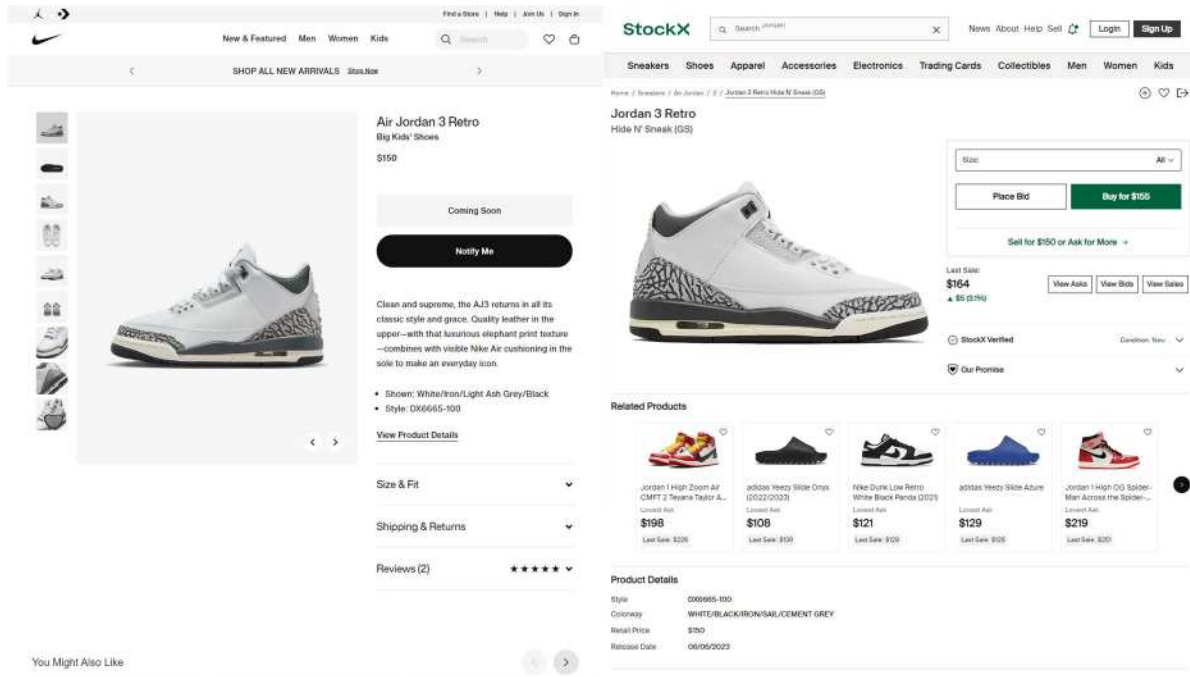
⁶² See e.g., <https://stockx.com/nike/most-popular?belowRetail=true>; <https://stockx.com/retro-jordans/most-popular?belowRetail=true>; <https://stockx.com/converse/most-popular?belowRetail=true>.

⁶³ See Exhibit 6.0. StockX listed and had active sellers for 15 of 16 the upcoming shoes on their website. See also, <https://www.nike.com/launch?s=upcoming>.

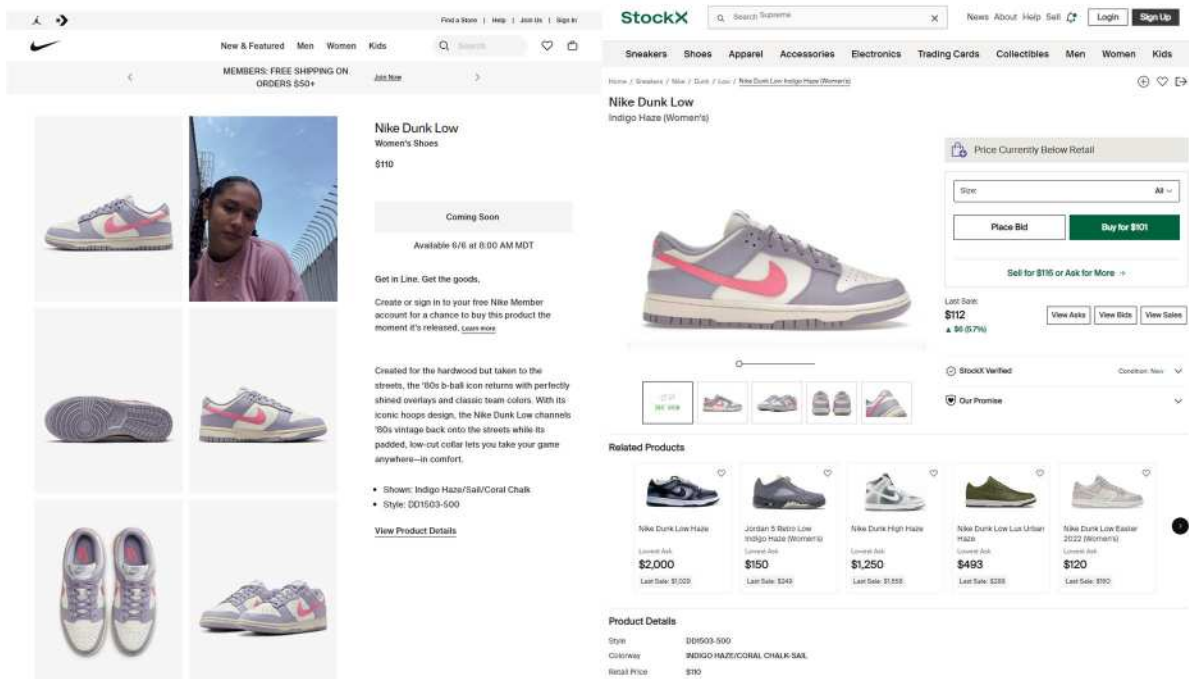
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shoes. The figures below provide examples of some of the products that Nike has announced and the corresponding pre-release listing for sale on StockX.

Figure 3: Air Jordan 3 Retro Style: DX6665-100⁶⁴



⁶⁴ See <https://www.nike.com/t/air-jordan-3-retro-big-kids-shoes-11DR7t/DX6665-100>; and <https://stockx.com/air-jordan-3-retro-hide-n-sneak-gs>.

HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL’S EYES ONLY**Figure 4: Nike Dunk Low Style: DD1503-500⁶⁵**

A consumer interested in buying these products could purchase the products now through StockX’s pre-release listing and not directly through Nike. This once again puts competitive pressure on Nike and on the sale of its to-be-released products. Dr. Vigil failed to consider this marketplace reality and, therefore, his conclusion that Nike and StockX do not compete by selling the same products at the same time is both flawed and unreliable.

3. StockX is a retailer

Even though StockX is a reseller of products, it still acts as a retailer of new and unused products. A retailer is a “company that sells goods to the public in stores and on the internet, rather than to stores, other businesses, etc.”⁶⁶ StockX is a company that hosts a website where it sells goods to the public on the internet, and it is therefore a retailer. Nike is also a company that sells its own goods to the public on the internet. As discussed above, StockX offers for sale new, unused Nike goods to the public, while Nike offers for sale the same new and unused Nike

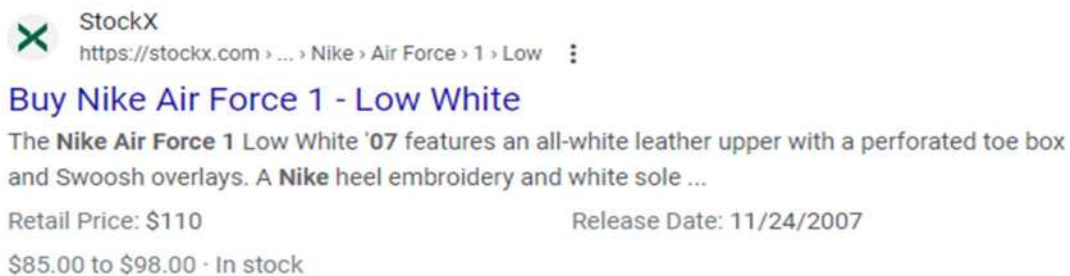
⁶⁵ See <https://www.nike.com/t/dunk-low-womens-shoes-CvN8xd/DD1503-500>; and <https://stockx.com/nike-dunk-low-indigo-haze-womens>.

⁶⁶ <https://dictionary.cambridge.org/us/dictionary/english/retailer>.

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goods. StockX is not an authorized Nike retailer.⁶⁷ A consumer seeking to purchase new Nike shoes can do so either directly through Nike (or its authorized retail partners) or through the StockX platform. The figure presented in Exhibit 7 demonstrates that when a customer searches for a pair of one of Nike’s most popular styles of shoe, the Nike Air Force 1 '07’s, the consumer would be presented with a link to Nike, then links to Foot Locker, Dick’s Sporting Goods, Nordstrom, Hibbit, and then a link to StockX. The figure below presents the StockX listing that is presented when “Nike Air Force 1 '07” is searched for in Google.

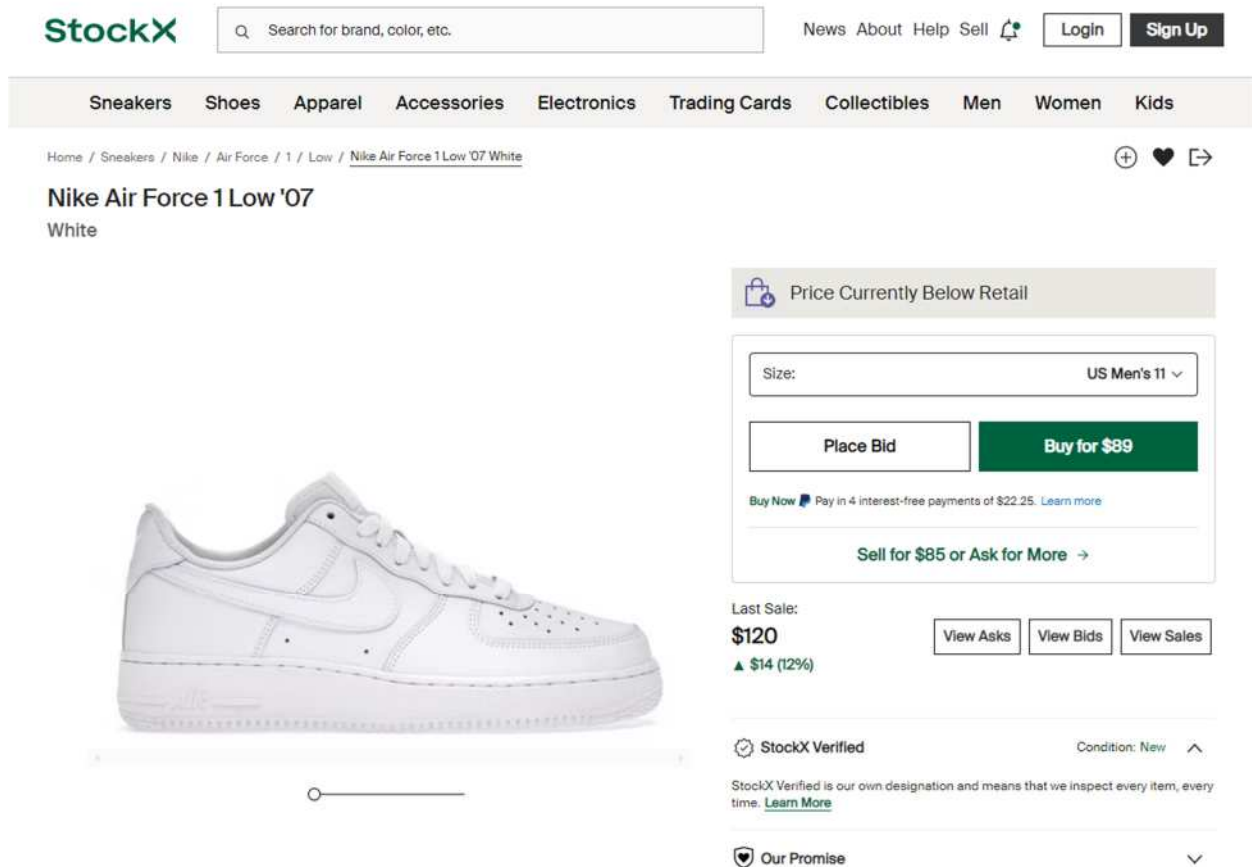
Figure 1: StockX Google Search Result for “Nike Air Force 1 ‘07”⁶⁸



As this figure demonstrates, StockX identifies that the product is in-stock and ready for sale to the public. The listing also demonstrates that the in-stock products sold by StockX are priced below the retail price of \$110. If consumers click on this link, they are sent to a webpage where they can select their size and purchase the product using a buy button, which is demonstrated in the figure below. This figure also shows that if the price is below the retail price, then the StockX webpage identifies that for the consumer before they decide to purchase the product.

⁶⁷ First Amended Complaint at p. 18.

⁶⁸ This search was conducted on May 24, 2023. https://www.google.com/search?q=Nike+Air+Force+1+%2707&rlz=1C1GCEU_enUS1034US1034&oq=Nike+Air+Force+1.

HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL’S EYES ONLY**Figure 2: StockX Listing for Nike Air Force 1 Low '07 Sneakers⁶⁹**

As this figure demonstrates, StockX is in the market selling new Nike products to consumers, which Nike also currently sells directly to consumers. Dr. Vigil failed to consider StockX as a retailer in the marketplace for new Nike shoes that Nike currently sells online.

4. From an economic perspective, Nike and StockX operate in the Retail Athletic Shoe/Sneaker Market

Dr. Vigil claims that the two firms operate in separate markets: Nike sells in the primary market, whereas StockX is a secondary marketplace where third-party sellers can re-sell Nike products.⁷⁰ From an economic perspective, as it relates to competition, this distinction is irrelevant. As I explained above, the availability of the same Nike products as it is offering on its own platform on the StockX platform, often at prices below retail, ensures that consumers can substitute StockX purchases for Nike purchases of many of the same items. StockX operating in

⁶⁹ This search was conducted on May 24, 2023. <https://stockx.com/nike-air-force-1-low-white-07>.

⁷⁰ Vigil Report, pp. 23-24.

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the so-called “secondary” marketplace does not affect demand substitutability of Nike goods. For these reasons, Dr. Vigil is incorrect to conclude that just because Nike is in the “primary” market and StockX is in a “secondary” market, the parties do not compete.

B. Dr. Vigil improperly assumed that it is highly unlikely StockX diverted sales from Nike

Dr. Vigil also opines that it is highly unlikely that the StockX platform’s sales of Nike products divert sales from Nike.⁷¹ Dr. Vigil draws this conclusion based on a statement that StockX’s customers are so called “‘sneakerheads’ that are ‘highly discriminating and very selective’ and only interested in limited-edition items that are no longer available.”⁷² Dr. Vigil did not provide any evidence of what portion of StockX’s customer base is made up of these so-called “sneakerheads” or what portion of StockX sales of Nike products are derived from these “sneakerheads.”

As described above, I have identified at least 71 styles of shoes that are currently sold by both Nike and StockX.⁷³ According to the information provided on StockX’s website, StockX has sold more than 200,000 units of these styles in the last twelve months alone, which were likely sold when these products were available for sale by Nike.⁷⁴ Dr. Vigil fails to consider this evidence when he asserts the diversion of sales was “highly unlikely.”

C. Dr. Vigil ignored the negative economic impact that StockX has on Nike⁷⁵

Dr. Vigil opines that Nike benefits from the StockX platform and StockX’s conduct but fails to consider the negative economic impact that StockX’s platform has on Nike and its consumers. For example, StockX’s platform incentivizes the predatory use of “shopping bots” by resellers and scammers to buy up popular Nike products so they can turn around and sell the items on StockX’s platform for a substantial markup.

⁷¹ Vigil Report, pp. 32-37.

⁷² Vigil Report, p. 32.

⁷³ See Exhibit 4.0.

⁷⁴ See Exhibit 4.0.

⁷⁵ I understand that another Nike expert is offering a rebuttal opinion to Dr. Vigil’s opinion that Nike is not harmed by the sale of counterfeit “Nike” goods on StockX’s platform or StockX’s false advertising claims guaranteeing that all products sold on its platform are “100% Verified Authentic.”

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A bot is a software application that is programmed to run certain programmed or repetitive tasks.⁷⁶ Sneaker or shoe bots are typically designed to help individuals quickly purchase limited edition shoes or shoes with limited stock.⁷⁷ After purchasing the shoes using the bots, the users often resell the products at higher prices.⁷⁸ Bots are known to have significant negative impact on brand reputation and revenue, increase infrastructure costs, slow site speed, skew web metrics, and reduce conversion rates.⁷⁹ Shoes that are purchased by a bot prevent actual consumers from purchasing the shoes they wanted to purchase at the price the retailer offered.⁸⁰ Although the retailer makes the sale, “the brand will fail to make long term relationships with customers, as bots are software, and come at the expense of human shoppers.”⁸¹

Nike has been heavily impacted by bots, as they face nearly 12 billion bot entries a month.⁸² Depending on the popularity of a Nike launch, bot attacks can make up about ten to fifty percent of all entries.⁸³ Currently there are hundreds of bots that can be used to purchase products. Some of the most well-known of these include Wrath AIO, Prism AIO, Kodai AIO, MekPreme, Balkobot, Ganesh Bot, NikeShoeBot, and Project Enigma.⁸⁴ Bot resellers, who after receiving their bot-bought goods, set their marked-up prices and promote the availability of the product on secondary marketplace sites, like StockX.⁸⁵ Websites like StockX are attractive to

⁷⁶ <https://aws.amazon.com/what-is/bot/>.

⁷⁷ <https://www.kasada.io/sneaker-bots-evolution-ecosystem/#:~:text=Bots%20shut%20them%20out%20of, Loss%20of%20revenue> and <https://www.imperva.com/learn/application-security/sneaker-bot/>.

⁷⁸ <https://www.kasada.io/sneaker-bots-evolution-ecosystem/#:~:text=Bots%20shut%20them%20out%20of, Loss%20of%20revenue> and <https://www.imperva.com/learn/application-security/sneaker-bot/>.

⁷⁹ <https://www.kasada.io/sneaker-bots-evolution-ecosystem/#:~:text=Bots%20shut%20them%20out%20of, Loss%20of%20revenue>. *See also*, <https://www.imperva.com/learn/application-security/sneaker-bot/>, <https://www.indusface.com/blog/how-to-stop-sneaker-bots-from-ruining-your-business/>, <https://risnews.com/bots-e-tailers-greatest-friend-or-greatest-foe>, and <https://fashionunited.com/news/fashion/bots-are-purchasing-limited-edition-products-to-re-sell-at-a-higher-price/2023031352791>.

⁸⁰ <https://fashionunited.com/news/fashion/bots-are-purchasing-limited-edition-products-to-re-sell-at-a-higher-price/2023031352791>.

⁸¹ <https://fashionunited.com/news/fashion/bots-are-purchasing-limited-edition-products-to-re-sell-at-a-higher-price/2023031352791>.

⁸² https://www.nike.com/launch/t/inside-snkr-bot-protection?cp=usns_aff_nike_content_PID_100029727_Skimlinks&cid=4942550&cjevent=80e4b13cfbe211ed83d257cf0a82b836.

⁸³ https://www.nike.com/launch/t/inside-snkr-bot-protection?cp=usns_aff_nike_content_PID_100029727_Skimlinks&cid=4942550&cjevent=80e4b13cfbe211ed83d257cf0a82b836.

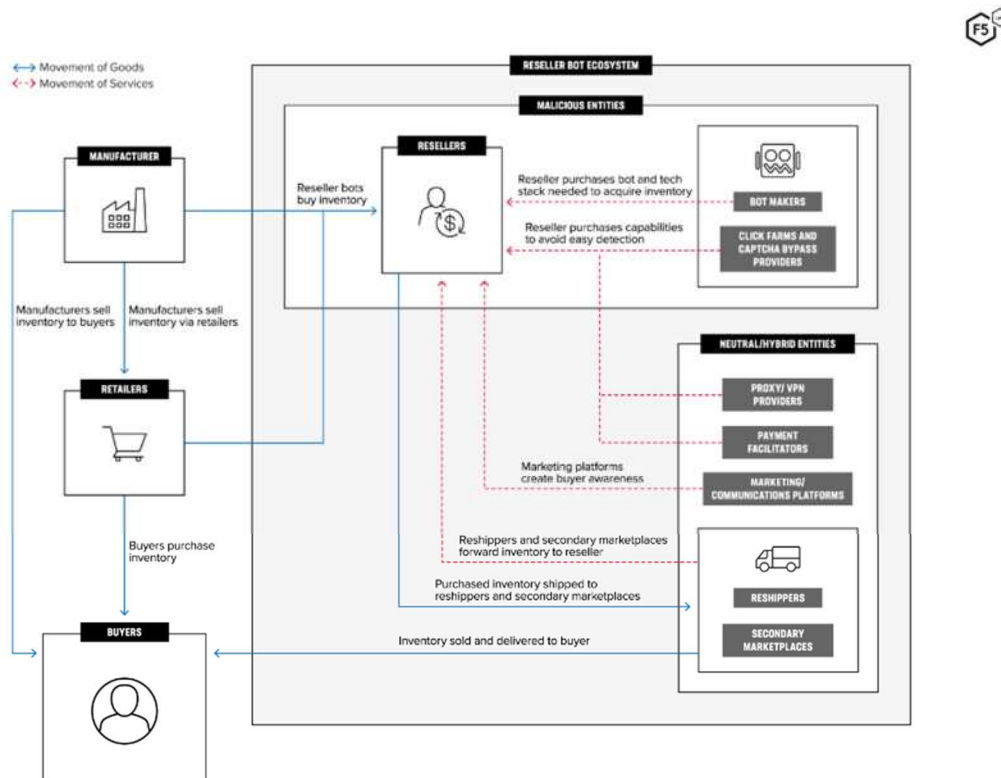
⁸⁴ <https://proxyway.com/best/sneaker-bots>.

⁸⁵ <https://www.retailtouchpoints.com/topics/digital-commerce/resellers-vs-retailers-how-to-handle-the-bot-problem#:~:text=Once%20the%20reseller%20receives%20the,profit%20on%20an%20exclusive%20item>.

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these bot resellers because of their large built-in customer base and additional services such as inventory management, shipping and logistics, payments collection, and fraud detection.⁸⁶ While the actions of bots are detrimental to retailers like Nike, companies like StockX benefit.⁸⁷ The organizations who make bots indicate that StockX is one of the best places to start a “side-hustle” and make a profit selling shoes while using their bots.⁸⁸ The figure below provides a summary of the reseller bot ecosystem.

Figure 5: Reseller Bot Ecosystem⁸⁹



StockX promulgates this practice by acting as the “Stock market for things,” where users can track shoe collections like asset portfolios and brands to hold “IPOs” for new products.⁹⁰ The StockX ecosystem functions similar to the stock market – the current market demand determines the price of the products featured on the site, and shoppers are able to bid and buy items at real-

⁸⁶ <https://www.f5.com/labs/articles/cisotociso/reseller-bots-understanding-the-ecosystem>.

⁸⁷ <https://www.f5.com/labs/articles/cisotociso/reseller-bots-understanding-the-ecosystem>.

⁸⁸ <https://www.aiobot.com/best-sneaker-resale-sites/>; <https://www.nikeshoebot.com/how-to-make-money-on-stockx/>.

⁸⁹ <https://www.f5.com/labs/articles/cisotociso/reseller-bots-understanding-the-ecosystem>.

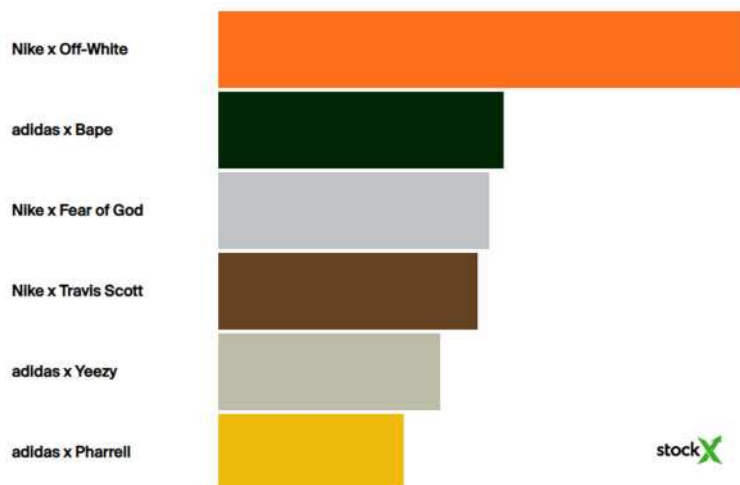
⁹⁰ <https://www.cnn.com/2019/09/25/tech/stockx-detroit-sneaker-startup/index.html>.

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time prices.⁹¹ Like a stock exchange, StockX tracks prices and enables the trades.⁹² For many consumers, StockX has made them rethink how they view consumer goods.⁹³ One consumer has stated that “I will use them to see if a sneaker that I don’t necessarily want to own for my personal collection is going to generate a profit for me and how much that profit could be.”⁹⁴

The StockX Buyer’s Guide to Resale, released in March 2019, acts as an investment guide and informs users on what factors lead to success and failure in the sneaker resale industry.⁹⁵ StockX data indicates that the majority of their sales had a retail multiple of one-to-two times the MSRP.⁹⁶ The guide breaks down for users how different characteristics including shoe size, brand, and color influence resale prices.⁹⁷ Specifically for brand, the guide indicates multiple times that Nike is the most profitable brand on StockX for resellers. First, the guide looks at “Average Retail Multiples for Popular Collabs” which in their chart shows Nike x Off-White with a return that is nearly double the next collaboration.⁹⁸

Figure 6: Average Retail Multiples for Popular Collaborations⁹⁹



⁹¹ <https://www.highsnobiety.com/tag/stockx/#:~:text=In%20the%20StockX%20ecosystem%2C%20you,items%20at%20real%2Dtime%20prices.>

⁹² <https://qz.com/1626501/how-stockx-helped-make-sneakers-an-investment.>

⁹³ <https://www.cnn.com/2019/09/25/tech/stockx-detroit-sneaker-startup/index.html>.

⁹⁴ <https://www.cnn.com/2019/09/25/tech/stockx-detroit-sneaker-startup/index.html>.

⁹⁵ <https://stockx.com/news/the-stockx-data-guide-to-resale/>.

⁹⁶ <https://stockx.com/news/the-stockx-data-guide-to-resale/>.

⁹⁷ <https://stockx.com/news/the-stockx-data-guide-to-resale/>.

⁹⁸ <https://stockx.com/news/the-stockx-data-guide-to-resale/>.

⁹⁹ <https://stockx.com/news/the-stockx-data-guide-to-resale/>.

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Further, the guide explains that “Nike SB has the best returns for a large segment” and that at the brand level “Nike has the highest max resale premium”.¹⁰⁰ One example is that a pair of Nike SB Low London’s were sold on StockX for more than “83x their retail price”, with the demand being driven by its limited 202 pair release.¹⁰¹ According to this StockX guide, if a reseller want to maximize their profit, they should buy and sell Nike shoes.

StockX also encourages resellers to sell higher quantities, which could push sellers to use bots. The StockX Seller Program establishes seller levels and provides clear performance standards for sellers. The better the performance, the lower the seller fee.¹⁰²

Table 1: Base Transaction Fees by Selling Level¹⁰³

Level	Quarterly Sales Required	Quarterly Sales (\$) Required	Base Transaction Fee
1	n/a	n/a	10.0%
2	3	\$500 (USD)	9.5%
3	6	\$1,500 (USD)	9.0%
4	25	\$5,000 (USD)	8.5%
5	250	\$30,000 (USD)	8.0%

Sellers at level 3 also get bulk shipping, while sellers at level 4 get access to bulk shipping and bonus discounts, early payouts, and StockX’s advanced tools, and sellers at Level 5 get those same benefits as well as VIP account management.¹⁰⁴ These levels incentivize the sellers to sell more and more products on the StockX website and potentially to use bots to acquire the amount of sales that are required to reach those levels. While, StockX has benefited from these bots as the resellers who use them drive demand for specific sneakers to their marketplace, retailers like Nike are suffering from their negative externalities.¹⁰⁵ Dr. Vigil failed

¹⁰⁰ <https://stockx.com/news/the-stockx-data-guide-to-resale/>.

¹⁰¹ <https://stockx.com/news/the-stockx-data-guide-to-resale/>.

¹⁰² <https://stockx.com/help/articles/What-is-the-StockX-Seller-Program>. It appears that StockX is updating its Seller Program to lower the base transaction fee and provide additional benefits to the sellers, while requiring more quarterly sales to reach each level. See <https://stockx.com/news/stockx-seller-program/>.

¹⁰³ <https://stockx.com/help/articles/What-is-the-StockX-Seller-Program>.

¹⁰⁴ <https://stockx.com/about/selling/>.

¹⁰⁵ <https://www.kasada.io/sneaker-bots-evolution-ecosystem/#:~:text=Bots%20shut%20them%20out%20of, Loss%20of%20revenue>. See also, <https://queue-it.com/blog/sneaker-bot-prevention/#what-are-the-business-impacts-of-sneaker-bots> and <https://www.imperva.com/learn/application-security/sneaker-bot/>.

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to consider any of these negative externalities in his opinion that “Nike has benefited from StockX’s platform and actions,” and therefore his opinion is flawed.

VI. Rebuttal of the Expert Report of Catherine Tucker, Ph.D.

According to Dr. Tucker, she was asked to “[e]xplain the characteristics of StockX’s marketplace and business model, and to “[e]xplain how trust contributes to the success of resale marketplaces, and the potential implication for such platforms if they tolerate fraud on their platform.”¹⁰⁶ In both of these explanations, Dr. Tucker failed to tie her discussion to the facts of this case and failed to consider the negative effects of the false statements and sale of counterfeit merchandise on StockX’s and Nike’s performance in the market.

In explaining the features and characteristics of StockX’s marketplace and business, Dr. Tucker only considered StockX as a reseller and its place in the reseller marketplace. Dr. Tucker does not consider StockX as a retailer in the Retail Athletic Shoe/Sneaker Market. As discussed in detail above, this is the relevant market to consider for the claims that are asserted in this matter and Dr. Tucker failed to consider this market.

Dr. Tucker also discussed the importance of trust for a resale marketplace and what StockX and other resale marketplaces have done to establish that trust.¹⁰⁷ According to Dr. Tucker, “[t]he success of resale marketplaces hinges on their ability to enable positive interactions between buyers and sellers and establish trust between both groups.”¹⁰⁸

Dr. Tucker walks through companies that have failed to establish trusts and identifies what others and StockX have done to establish trust.¹⁰⁹ It is Dr. Tucker’s opinion that “[o]ne of StockX’s most salient trust-building features is its verification process and the accompanying ‘StockX Verified’ label for all products sold on its platform.”¹¹⁰ Dr. Tucker does not discuss or consider the effect on StockX, if its statements about one of its “most salient trust-building features” is determined to be false and misleading or the effect that it would have on Nike. Dr. Tucker also fails to discuss that StockX continues to allegedly sell counterfeit products even

¹⁰⁶ Tucker Report, p. 3.

¹⁰⁷ Tucker Report, pp. 13-33.

¹⁰⁸ Tucker Report, p. 13.

¹⁰⁹ Tucker Report, pp. 13-33.

¹¹⁰ Tucker Report, p. 28. “StockX’s multistep and proprietary verification process aims to give byers confidence that there is no evidence the product has a defect or is not genuine.”

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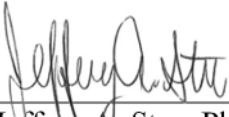
though they are “StockX Verified,” and how this would affect the trust that StockX needs to establish in order to be successful as a marketplace.¹¹¹ Specifically, Dr. Tucker did not consider how StockX’s success in the market would change if the statements they likely used to build this trust were found to be false and misleading or how these false and misleading statements affect Nike. Dr. Tucker’s report is flawed in that it failed to tie her opinions to the facts of this case and failed to consider the claims that have been asserted in this matter.

VII. Conclusions

Based on my review of the relevant opinions set forth by Dr. Vigil in the Vigil Report, it is my opinion that Dr. Vigil’s analyses and conclusions on competition, diverted sales, and StockX’s effects on Nike are flawed and unreliable. It is also my opinion that StockX operates as a retailer of new, unworn Nike shoes in the Retail Athletic Shoe/Sneaker Market, and that Dr. Vigil failed to consider the negative economic impact StockX has had on Nike and its customers.

Based on my review of the relevant opinions set forth by Dr. Tucker in the Tucker report, it is my opinion that Dr. Tucker failed to consider StockX as a retailer and the negative effects that the false statements and sale of counterfeit merchandise had on StockX’s or Nike’s performance in the market.

Respectfully submitted:



Jeffery A. Stec, Ph.D.
Managing Director
Berkeley Research Group
June 2, 2023

¹¹¹ According to Dr. Tucker, “[r]esale marketplaces that fail to cultivate positive interactions do so at the risk of their reputation and viability as a business.” Tucker Report, p. 13.

Exhibit 1

JEFFERY A. STEC, Ph.D.
BERKELEY RESEARCH GROUP, LLC
70 W. Madison Suite 5000 | Chicago, IL 60602

Direct: **312.429.7970**
jestec@thinkbrg.com

As a Managing Director, leader of Berkeley Research Group's Intellectual Property Practice, and co-leader of its Economics and Damages Community, Dr. Stec has worked extensively over the last 22 years in the areas of antitrust, finance, intellectual property, and survey research, both as a consulting expert and as an expert witness. His engagements involve, among other things, the application of economic, financial, statistical, and survey research theory and methodology to the collection and analysis of data to evaluate the economic impact of decisions made by consumers and firms.

In the area of intellectual property, Dr. Stec has conducted economic and econometric analyses to determine the value of intellectual property as well as the amount of economic damages resulting from patent, trademark, trade secret, or copyright infringement. In his work, he has addressed economic issues such as the appropriate measurement of revenues associated with the use of the infringing IP, the portion of those revenues that can be attributed to the intellectual property, and whether the apportionment can be regarded as reasonable. He has evaluated economic and survey research issues in the context of Section 337 investigations conducted by the U.S. International Trade Commission. In addition, he has also evaluated the effects of anticompetitive conduct as it relates to the use of IP. In the context of trademarks and trade dress, he has evaluated issues of secondary meaning, genericness, dilution, and likelihood of confusion. Dr. Stec has also determined economic damages that have resulted from false advertising and counterfeit claims.

In the area of survey research, Dr. Stec has both created and critically evaluated surveys in the context of antitrust and intellectual property engagements. He has developed complex sample designs, designed survey questionnaires, and collected and analyzed survey data, including the derivation of complex variance estimates using simulation methods. He has conducted surveys that have been used to determine consumers' perceptions and actions in the marketplace, including whether products' names or trade dress are distinctive, confusing, or generic. Dr. Stec has also examined how products are used in the marketplace and how consumers value product features. Dr. Stec has consulted on best survey practices for the design, collection, and analysis of survey data.

In the area of antitrust, Dr. Stec has used economic and econometric analyses to investigate issues related to market definition, class certification, determination of market power or market dominance, and the effect of anticompetitive acts on competition. Some of these investigations include the effects of anticompetitive acts in the context of Sherman, Clayton, and Robinson-Patman Act claims dealing with abuse of market power as well as the use of various horizontal and vertical restraints, like price fixing, price discrimination, refusals to deal, exclusive dealing arrangements, and tying, on individual firms or members of a class.

In the area of finance, Dr. Stec has used financial theory and econometrics to conduct analyses to determine asset values and shareholder loss in the context of securities fraud and late trading claims. These analyses have included the use of various loss causation and event study paradigms as well as trading simulation studies. Dr. Stec has examined claims of financial lending discrimination, which included investigations of the likelihood of discrimination and the potential damages caused by that

discrimination. Dr. Stec has also used financial theory to determine damages in commercial contract disputes and product liability litigation.

Engagements Dr. Stec has worked on have dealt with the semiconductor and semiconductor design, computer software and hardware, consumer products, pharmaceuticals, telecommunications, handheld mobile devices, paper products, casino gaming, consumer appliances, automated pharmacy systems, consumer electronics, automobiles, heavy haul truck trailers, textile machine, precious stones, fashion apparel and luxury accessories, outdoor lighting, vehicle parts, medical products, hardware, product packaging, toys, entertainment, food, mass media, plastics, pallet, television ratings, financial securities and loans, alcohol, tobacco, sugar, sweetener, and tradeshow industries, among others.

Prior to joining Berkeley Research Group, Dr. Stec had been engaged as a Vice President in economic and survey research consulting with another economic consulting firm. Prior to that, he has analyzed the credit card industry in detail, including co-authoring monthly state and national surveys to gauge consumers' credit card and overall indebtedness. He also helped to design numerous telephone, mail, and internet surveys for various clients. His responsibilities included everything from sample and questionnaire design to data collection methods and statistical analyses of survey data. He has performed econometric studies and written on various economic and survey research topics such as, optimal forecasting methods using time-series data, the effects of unit nonresponse on survey data, efficient methods for conducting telephone surveys, and methods for gauging the degree of consumer indebtedness using original survey data.

Dr. Stec has presented his research at the annual meetings of the American Statistical Association, the American Association of Public Opinion Research, the Midwest Association of Public Opinion Research, the Ohio Association of Economists and Political Scientists, the Midwest Macroeconomics Association, and the Columbus Association of Business Economists as well as in numerous presentations as a guest lecturer and presenter for CLE courses. He has also published his work in *Public Opinion Quarterly*, the *American Statistical Association's Proceedings of the Section on Survey Research Methods* and *Proceedings of the Section on Government Statistics and Section on Social Statistics*. Dr. Stec also contributed and served as a member of the advisory board for the *Encyclopedia of Survey Research Methods*. He has also written the chapter on the use of surveys in litigation published in the *Litigation Services Handbook*. He is recognized as an expert and thought leader by *Who's Who Legal – Litigation*, *Who's Who Legal – Thought Leader*, *IAM Patent 1000*, and *Chambers and Partners, Litigation Support: Economic Analysts*.

EDUCATION

Ph.D., Economics	The Ohio State University, 2000
M.A., Economics	The Ohio State University, 1995
B.A., Economics, Math Minor	The University of Illinois – Chicago, 1994
B.A., Philosophy, Psychology	Cornell University, 1991

PROFESSIONAL EXPERIENCE

2004-2017	<i>Vice President</i> , Intellectual Property, Charles River Associates
2000-2004	<i>Director</i> , Intellectual Property, InteCap, Inc.

SELECTED EXPERIENCE

Intellectual Property

Developed economic models to determine damages due to infringement of patents held by a large paper products company. Included a determination of the damages due to the plaintiff's loss of distribution for its patented products due to the infringement of the defendant. Developed a lost distribution model to quantify the amount of distribution lost and the value of that distribution in terms of lost sales to the plaintiff. Additionally, it included the development of a lost profits, market share based model that quantified the lost profits due to lost customers' sales.

Provided expert testimony in a patent infringement litigation in the plastic product manufacturing industry. Determined the percentage of accused products that infringed a number of patents by developing and conducting a multi-stage probability sample of the relevant plastic packaged products. Responsibilities included sample design, overseeing data collection, and data analysis using advanced statistical methods.

Developed economic models to determine damages suffered by a manufacturer of pharmaceutical products as a result of infringement of a number of patents. Studied the market for the patented product, evaluated the substitutability of potentially competing products, and determined sales and profits lost by the patent holder. Constructed and queried a large product database to determine which products infringed which of the many patents-in-suit. Developed analyses of a reasonable royalty under a hypothetical licensing agreement and the effect of the infringing product on the price in the marketplace. Evaluated an econometric market expansion theory proposed by the counterparty.

Developed economic models to determine damages suffered by a manufacturer of semiconductor devices as a result of a competitor's infringement of numerous patents. Determined the profits the plaintiff lost due to price erosion and a determination of reasonable royalties on infringing sales. Constructed a sophisticated econometric model using a large dataset of sales, prices, and other variables that estimated the price elasticity of demand for the relevant product and geographic markets.

Provided expert testimony in a trademark infringement litigation in the children's toy industry. Determined whether survey data were appropriately collected and analyzed in the evaluation of secondary meaning to a mark. Evaluated the survey methodology used by the counterparty to determine whether secondary meaning had accrued to the mark.

Constructed and queried a large proprietary database of regional oil and gas prices to determine differences in branded and generic prices for the purposes of determining the value of a gasoline trademark. Included filtering of the database to examine price differences for various grades of gasoline, various regions of operation, and various time periods.

Provided expert testimony in a trademark infringement litigation in the wine industry. Determined whether survey data were appropriately collected and analyzed in the context of likelihood of confusion between two marks. Evaluated the survey methodology used by the counterparty to determine whether there was survey evidence of the likelihood of confusion between the marks.

Developed economic models to determine damages suffered by a manufacturer of coronary medical devices as a result of a competitor's infringement of numerous patents. Developed lost profits and reasonable royalty models addressing issues of market definition, product pricing in the absence of infringement, market size and competitors' market share but-for infringement, and determination of incremental costs. Developed sophisticated econometric models to address these issues.

Provided expert testimony in a theft of trade secrets in the investor relations services and technology industry. Determined expected client longevity in the absence of the theft of trade secrets taking into account client-specific characteristics using multivariate statistical models that also accounted for the censored nature of the underlying data. Developed damages models using the expected client longevity and the actual client longevity to determine the impact of the alleged theft of trade secrets.

Developed economic models to determine damages suffered by a consumer goods manufacturer as a result of counterfeit sales being made by various retailers. Determined the profits the plaintiff lost due to price erosion in the relevant product and geographic markets. Developed econometric models to determine the price elasticity of demand for the impacted consumer goods.

Developed economic models to determine damages suffered by inventors of children's consumer products as a result of infringement of a number of patents. Evaluated the product and geographic markets for the patented product; valued the patented technology, including the determination of the impact of the use of the patented technology on the infringer's sales and profits and the costs to design around the infringed technology; and determined the impact various other factors would have on the royalty rate that might be negotiated by both parties.

Developed economic models to determine damages suffered by a manufacturer of gene sequencing and analysis products as a result of infringement of a number of patents. Studied the markets for the patented product, evaluated the substitutability of potentially competing products made by various manufacturers, and valued the patented technology from both parties' perspectives. Constructed and queried a large product database to determine which products infringed which patents-in-suit and the revenues associated with those products.

Provided expert testimony in a patent infringement matter related to antitrust counterclaims in the centralized hospital pharmacy automation systems market. Conducted analyses to determine the relevant product and geographic markets. Evaluated whether the counterparty had market power in the relevant markets. Examined alleged anticompetitive acts to determine the economic impact of these acts. Determined economic damages these anticompetitive acts had on the claimant.

Provided expert testimony in a trademark infringement litigation in the low-bed, heavy haul trailer industry. Designed sampling approach and survey instrument used to collect data. Analyzed data collected from the survey in the context of whether secondary meaning could be attached to the trademark at issue.

Provided expert testimony in a trademark infringement litigation in the clothing fashion industry. Evaluated the market definition methodology used by the opposing expert and determined the appropriate definition of the relevant market. Evaluated the survey methodology used by the counterparty to determine whether there was survey evidence of the likelihood of confusion between the marks. Determined whether survey data were appropriately collected and analyzed to determine the likelihood of confusion. Evaluated whether damages occurred to the defendant due to the likelihood of reverse confusion.

Developed economic analyses to determine the appropriate royalty rate for a compulsory license which would give the infringing party the ability to continue to make and sell medical devices after a jury found infringement. Examined the patented technology's benefits to the infringer and the maximum it would be willing to pay for its use. Examined the benefits of the patented technology to the infringed party and the minimum it would be willing to accept for its use.

Provided expert testimony in a trademark infringement litigation in the antibiotic ointment industry. Evaluated the survey methodology used by the counterparty to determine whether there was survey evidence that secondary meaning had been established for the trademark. Determined whether survey data were appropriately collected and analyzed to determine secondary meaning. Evaluated the appropriateness of using the survey data collected for the purposes of determining whether dilution to the trademark had occurred.

Developed economic models to determine damages suffered by a manufacturer of outdoor security lighting products as a result of patent infringement. Defined the markets for the patented product and the relevant substitutes for that product. Established the likelihood that lost sales due to the counterparty's infringement of the patent. Determined the value of the patented technology to both parties in generating product sales.

Provided expert testimony in a patent infringement litigation in the handheld mobile computing devices industry for the purposes of a preliminary injunction. Defined the relevant market for the alleged infringing products. Determined the competitive effect that the accused products would have on the counterparty's sales and product prices. Evaluated the likelihood that the plaintiff would be irreparably harmed by the alleged patent infringement. Evaluated the counterparty's opinions as to the effects on its sales and prices of the alleged infringement.

Conducted survey research in a trademark infringement litigation in the student information systems software industry. Designed the survey questionnaire and sampling approach used to collect data. Analyzed data collected from the survey in the context of whether secondary meaning could be attached to the trademark at issue.

Provided expert testimony in a patent infringement litigation in the hydraulic disc bicycle brake industry. Conducted analyses to determine the relevant market. Evaluated claims of lost profits, price erosion, and reasonable royalties. Developed analyses to determine demand for the patented feature of the products as well as economic damages due to patent infringement.

Provided expert testimony in a patent infringement litigation in the medical products industry. Evaluated the product market for the patented product to determine demand for and the value of the patented technology. Determined the costs to design around the infringed technology and determined the impact various other factors would have on the royalty rate that might be negotiated by both parties.

Provided expert testimony in a copyright infringement litigation in the software industry. Determined the relevant market in which the software was used. Developed analyses to determine the foregone profits due to the illegal use of the copyrighted software as well as the unjust enrichment for that use.

Developed economic and survey research analyses to evaluate damages claims associated with alleged violations of the Lanham Act concerning false advertising in clothes dryer industry. Evaluated whether the alleged false advertising had an adverse impact on the sales and prices of the counterparty's clothes dryers. Evaluated whether the alleged false advertising had a favorable impact on the accused party's clothes dryers.

Provided expert testimony in a patent infringement litigation in the farm machinery industry. Oversaw the sampling and collection of data from the use of the alleged infringing machines as well as non-infringing alternatives. Conducted advanced statistical tests to determine whether various configurations of the farm machinery produced statistically different measures of performance. Evaluated the statistical methodology used by the counterparty's expert.

Provided expert testimony in patent infringement matter in the medical products industry. Studied the markets for the patented product and evaluated the substitutability of potentially competing products made by various manufacturers to determine the relevant market. Developed economic models to value the patented technology from both parties' perspectives in order to determine damages suffered by the plaintiff. Evaluated the opposing expert's damages opinions attributed to the counterparty's alleged infringement.

Conducted industry research and developed economic models to determine the value of a portfolio of patents in the gene sequencing industry. Provided information on the possible ways in which the patents could be monetized to provide value to the client.

Provided expert testimony in a patent infringement litigation in the compact digital camera industry. Evaluated the survey methodology used by the counterparty's expert to determine the value of the patented features in the accused products. Determined whether the survey and sampling design were appropriately constructed. Examined whether the survey data were appropriately collected and analyzed to determine the value of the patented features.

Conducted survey research in a copyright infringement litigation in the outdoor wind sculpture industry. Designed the survey questionnaire and sampling approach used to collect data. Analyzed data collected from the survey to evaluate whether the protected work and the accused work were substantially similar from the viewpoint of an ordinary observer.

Provided expert testimony in a patent infringement investigation in the video analytics software industry. Evaluated the counterparty's claims regarding the economic prong of the domestic industry requirement. Determined the amount of the bond associated with the Presidential review period.

Provided expert testimony in a patent infringement investigation in the vehicle windshield wiper blade industry. Analyzed financial and industry information to evaluate whether a domestic industry had been established by the Complainant. Conducted analyses to evaluate the appropriateness of an exclusion order, cease-and-desist order, and the appropriate amount of the bond associated with the Presidential review period. Evaluated the counterparty's claims regarding the economic prong of the domestic industry requirement.

Conducted survey research in a trademark infringement litigation in the retirement home industry. Designed the survey questionnaire and sampling approach used to collect data. Analyzed data collected from the survey in the context of whether there was the likelihood of confusion between the trademarks at issue.

Developed economic analyses to determine whether there was evidence of commercial success for a pharmaceutical product in its relevant market. Examined the financial information for the pharmaceutical product as well as discounted profitability of the product relative to the investments undertaken to bring the product to market. Evaluated the counterparty's claims regarding commercial success.

Conducted survey research in a trademark infringement litigation in the coffee maker industry. Designed sampling approach and survey instrument used to collect data. Analyzed data collected from the survey in the context of whether secondary meaning could be attached to the trademark at issue.

Conducted industry research, evaluated economic models, and developed licensing strategy to assist the valuation and licensing of patented technology and trade secrets in the steel-making industry. Provided information on the possible ways in which the technology could be licensed and provided strategic advice on how to set up the licensing agreement.

Developed economic analyses to determine whether there was evidence of commercial success for a pharmaceutical product in its relevant market. Determined the relevant market for the product. Examined the financial information for the pharmaceutical product as well as the market presence of the product. Accounted for relevant macroeconomic, industry, and company-specific factors in examining the pharmaceutical product's performance.

Provided expert testimony in a patent infringement litigation in the commercial bakery tray industry. Conducted analyses to determine the relevant market. Determined economic damages due to lost profits on lost sales, price erosion, and reasonable royalties.

Provided expert testimony in a patent infringement investigation in the smartphone, tablet, and other wireless devices industries. Analyzed the relevant markets to evaluate whether harm to public interest was likely to occur if the Commission was to grant the Complainant an exclusion order. Evaluated the counterparties' claims regarding potential harm to public interest under the proposed exclusion order.

Provided expert testimony in a trademark infringement litigation in the tool industry. Evaluated the survey methodology used by the counterparty to determine whether there was survey evidence of secondary meaning related to the trade dress of the tools. Also evaluated whether there was a likelihood of confusion in the marketplace between the asserted trade dress and the accused trade dress.

Conducted survey research in a trademark and trade dress infringement litigation in the office supplies industry. Designed sampling approach and survey instrument used to collect data. Analyzed data collected from the survey in the context of whether there was a likelihood of confusion in the marketplace between the protected trademark and trade dress and the accused trademark and trade dress.

Provided expert testimony in patent infringement litigations in the software industry. Designed sampling approach and survey instrument used to collect data. Analyzed data collected from the survey in the context of the usage, importance, and purchasing drivers of various software features. Evaluated the counterparty's claims regarding various software features.

Provided expert testimony in a trademark infringement litigation in the vegetable produce industry. Evaluated the survey methodology used by the counterparty to determine whether there was survey evidence of a likelihood of confusion between the asserted trademark and the accused trademark. Determined whether survey data were appropriately collected and analyzed to determine likelihood of confusion.

Conducted survey research in a patent infringement litigation in the smartphone, tablet, MP3 player, and computer industries. Designed sampling approach, experimental design, and survey instrument used to collect data. Analyzed data collected from the survey in the context of the usage, importance, and willingness to pay for various product features.

Provided expert testimony in a patent infringement litigation in the medical products industry for the purposes of a preliminary injunction. Defined the relevant market for the alleged infringing products. Determined the competitive effect that the accused products would have on the counterparty's sales and product prices. Evaluated potential damages claims and the defendant's ability to pay these claims. Evaluated the likelihood that the plaintiff would be irreparably harmed by the alleged patent infringement. Evaluated the counterparty's opinions as to the effects on its sales and prices of the alleged infringement.

Provided expert testimony in a patent infringement litigation in the smartphone industry. Evaluated the survey methodology used by the counterparty to determine the usage of, importance of, and willingness to pay for the alleged patented smartphone features.

Conducted survey research and econometric analyses in a patent infringement litigation in the digital content management industry. Evaluated the counterparty's survey research in the context of the willingness to pay for various product features.

Provided expert testimony in a patent infringement arbitration in the smartphone industry. Conducted economic analyses to determine the appropriate balancing royalty payment for a cross license to each party's respective patent portfolios, which included patents, divested patents, and standard essential patents. Evaluated the counterparty's opinions as to balancing royalty payment.

Conducted survey research in a trade dress matter in the clothing industry. Designed sampling approach and survey instrument used to collect data. Analyzed data collected from the survey in the context of whether there was secondary meaning associated with the asserted trade dress.

Conducted survey research in a trade dress matter in the baked goods industry. Designed sampling approach and survey instrument used to collect data. Analyzed data collected from the survey in the context of whether there was likelihood of confusion between the asserted trade dress and the allegedly infringing trade dress.

Provided expert testimony in patent infringement matter in the automotive industry. Evaluated the markets for the patented product as well as licensing practices in the industry. Developed economic models to value the patented technology from both parties' perspectives in order to determine damages suffered by the plaintiff. Evaluated the opposing expert's damages opinions attributed to the counterparty's alleged infringement.

Provided expert testimony in a patent infringement litigation in the disposable training pants industry. Evaluated the counterparty's survey research in the context of the usage, importance, and willingness to pay for various product features. Evaluated the counterparty's damages claim as it related to the use of the counterparty's survey evidence.

Provided expert testimony in a Lanham Act matter concerning false advertising in the mattress industry. Developed financial and econometric models to determine to what extent, if any, the alleged false advertising had on the plaintiff's sales and profits. Incorporated these models into a determination of the appropriate damages due to the alleged false advertising.

Provided expert testimony in a trademark infringement investigation in the shoe industry. Evaluated the survey methodology used by the counterparty to determine whether there was a likelihood of confusion in the marketplace between the asserted trade dress and the accused trade dress.

Provided expert testimony in a patent infringement litigation in the server software industry. Evaluated the counterparty's survey research in the context of the usage of various product features. Evaluated the counterparty's damages claim as it related to the use of the counterparty's survey evidence to apportion the royalty base and set the royalty rate.

Provided expert testimony in a patent infringement litigation in the camera industry. Designed sampling approach and survey instrument used to collect data. Analyzed data collected from the survey in the context of the usage and relative importance of various camera features. Evaluated the counterparty's claims regarding various software features.

Conducted survey research and developed economic analyses to evaluate claims associated with alleged false advertising in food industry. Evaluated whether the alleged false advertising had an adverse impact on the demand for the relevant food product.

Provided expert testimony in a trademark infringement litigation in the digital media content software industry. Evaluated the survey methodology used by the counterparty to determine whether there was a likelihood of confusion in the marketplace between the asserted trade dress and the accused trade dress.

Conducted survey research to evaluate claims associated with alleged false advertising in healthcare industry. Designed sampling approach and survey instrument used to collect data. Analyzed data collected from the survey to determine whether there was an impact to the false advertising.

Provided expert testimony in a patent infringement litigation in the telematics devices industry. Designed sampling approach and survey instrument used to collect data. Analyzed data collected from the survey in the context of the usage and relative importance of various telematics devices features.

Provided expert testimony in a trademark infringement litigation in the consumer lighting products industry. Conducted survey research to determine whether there was a likelihood of confusion in the marketplace between the asserted trademarks and trade dress and the accused trademarks and trade dress.

Provided expert testimony in a false advertising litigation in the pharmaceutical industry. Conducted econometric analyses that were used to determine whether the plaintiff incurred damages due to the alleged false advertising. Evaluated the counterparty's counterclaims regarding false advertising damages.

Provided expert testimony in a patent infringement matter in the automobile industry. Determined the value that could be associated with the alleged use of the patented technology in one component of a multicomponent product and the damages associated with that alleged use. Evaluated the counterparty's damages claims regarding patent infringement damages.

Provided expert testimony in a trademark infringement litigation in the video and audio editing software industry. Evaluated the survey methodology used by the counterparty to determine whether there was a likelihood of confusion in the marketplace between the asserted trademark and trade dress and the accused trademark and trade dress.

Provided expert testimony in multiple litigations related to alleged misrepresentations made in violation of the Lanham Act in the security services industry. Evaluated the surveys conducted by the counterparty's survey expert regarding the impact of the alleged misrepresentations on current consumers' decisions of which security services to retain. Evaluated counterparty's damages claims and methodology regarding the number of customers lost due to the alleged misrepresentations and the value of those customers' accounts.

Provided expert testimony in a patent infringement litigation in the home video game industry. Evaluated the counterparty's survey research in the context of the usage and value of various product features. Evaluated the counterparty's damages claim as it related to the use of the counterparty's survey evidence to apportion the royalty base and set the royalty rate.

Provided expert testimony in multiple patent infringement litigation dealing with an Abbreviated New Drug Application. Developed economic analyses to determine whether there was evidence of commercial success for a pharmaceutical product in its relevant market. Determined the relevant market for the product. Examined the financial information for the pharmaceutical product as well as the market presence of the product. Accounted for relevant macroeconomic, industry, and company-specific factors in examining the pharmaceutical product's performance.

Provided expert testimony in a trademark and copyright litigation in the entertainment industry. Conducted analyses to determine the value of the asserted intellectual property and the likely structure of a hypothetical license. Evaluated the counterparty's claims regarding trademark and copyright damages.

Provided expert testimony in a trademark infringement litigation in the automotive tire industry. Conducted survey research to determine whether there was secondary meaning associated with the asserted trade dress as well as whether there was a likelihood of confusion in the marketplace between the asserted trade dress and the accused trade dress.

Provided expert testimony in a trademark infringement litigation in the sporting goods industry. Conducted survey research to determine whether there was a likelihood of confusion in the marketplace between the asserted trademark and the accused trademark.

Provided expert testimony in a copyright royalty matter involving the distribution of a royalty pool amongst various claimants. Conducted economic analyses to determine the appropriate methodology to employ to allocate royalty payments to the claimants.

Antitrust

Developed economic analyses addressing liability and damage issues in a litigation involving claims of Robinson-Patman antitrust violations. Analyzed the economic impact of alleged price discrimination on the sales of the plaintiff using a very large database of sales transactions on a weekly basis for every cigarette retailer in the continental U.S. over a seven-year period. Developed sophisticated econometric models to quantify the amount of the economic impact. Reviewed financial and sales records to assess the impact on profits of alleged lost sales due to pricing decisions based on the higher costs.

Prepared economics analyses pertaining to the market structure, conduct, and performance for the rapid prototyping machine market. Conducted an economic analysis to determine the appropriate antitrust market. Determined the amount of market power that certain market participants had in the marketplace. Determined the effects to competition in the defined market of anticompetitive acts committed by the counterparty.

Provided expert testimony relating to the processed sugar industry which addressed whether events in that industry could have led to lost business opportunities for a firm in that industry. Conducted economic analyses to determine the appropriate market for the products at issue. Examined events in the industry and conducted industry research to determine the effects of industry events on business opportunities for that firm.

Developed economic analyses and conducted economic research to determine whether a large semiconductor manufacturer had a position of dominance in the relevant market for microprocessors. Analyzed the demand-side and supply-side substitution possibilities in the context of the determination of the relevant market. Analyzed innovation and competition in the industry to address the issue of dominance.

Developed analyses to address issues of class certification in a litigation dealing with claims of anticompetitive conduct in the wooden pallet industry. Addressed plaintiffs' proposed survey research, used to estimate damages, by examining their survey methodology using a total survey error approach.

Developed economic and econometric analyses and conducted economic research to determine whether collusive behavior took place among a group of large manufacturers against a class of downstream customers in the containerboard market. Analyzed the economics underlying the business and financial decision made in the operations of the manufacturing business.

Conducted survey research to determine what products and services are likely part of the relevant market for the purposes of determining substitutes for the products and services of two firms intending to merge their businesses into one firm in the sports entertainment market.

General Consulting and Litigation

Evaluated the damages suffered by a domestic manufacturer of orthopedic products as a result of a breach of best efforts clause by one of its foreign distributors. Reviewed financial and market data to gauge the performance of the distributor. Determined the revenues and profits lost by the manufacturer due to the distributor's failure to use its best efforts. Included an analysis of the value of returned inventory by the distributor to the manufacturer.

Evaluated the damages suffered by a domestic manufacturer of orthopedic products as a result of a breach of its contract with one of its domestic distributors. Reviewed financial and market data to gauge the performance of the distributor. Evaluated the use of mortality tables in the context of the plaintiff's expert report. Developed sophisticated NPV models that determined the revenues and profits lost by the distributor due to the breach of contract.

Provided consulting expertise to assist a large data collection and media ratings company in best practices improvements regarding its telephone survey operations. Conducted research into its current methods for conducting telephone surveys, including analyses of large databases of calling records and outcomes. Developed multivariate statistical models to better forecast calling outcomes and researched improved calling rules to enhance performance.

Provided expert testimony in a breach of contract litigation in which economic analyses were used to determine the loss of members and members' purchases suffered by a large hardware cooperative due to the breach of contract by a large accounting firm. Using large data sets provided by the coop, developed econometric analyses that gauged the economic impact of a large financial loss suffered by the cooperative due to the breach of contract while accounting for unrelated events surrounding the announcement of the loss.

Provided expert testimony in a breach of contract litigation related to software usage and the payment of royalties. Developed analyses that determined the number of licenses for which a software company was not paid a royalty for the use of the licenses. Evaluated the survey data and survey methodology used by the counterparty to determine the extent to which an embedded software program included in a larger software package was invoked.

Provided expert testimony in a breach of contract litigation related to product failure and the loss of business in the auto parts industry. Developed economic analyses to define properly the relevant market, estimate market size, and determine other factors that impacted the plaintiff's business. Evaluated the counterparty's use of product diffusion models to quantify damages due to lost business.

Provided consulting expertise to assist a large data collection and media ratings company in best practices improvements regarding its telephone survey operations. Conducted research of large databases of calling records and outcomes. Developed cost analyses to identify the direct and indirect costs of certain outcomes. Recommended alternative data collection methods and other best practices suggestions to minimize the costs of undesirable outcomes without compromising data quality.

Developed economic analyses to determine damages resulting from a breach of a license agreement between companies in the flat screen television industry. Evaluated counterparty's damages claims of foregone royalties and loss of enterprise value due to the breach.

Provided expert testimony in a litigation related to violations of ballot secrecy in the election of union officials. Developed statistical models to examine voting patterns and voter turnout from the contested elections to evaluate claims that the violation of ballot secrecy impacted election results. Evaluated counterparty's vote reallocation models to determine their reasonableness.

Evaluated the survey conducted by the counterparty's survey expert regarding the product characteristics and specifications that were factors in consumers' purchasing decisions of large, high-end computer servers. Conducted analyses of survey data to determine the importance of certain purchase drivers in the context of consumers' overall decision-making process.

Developed a multi-stage stratified sampling design used to draw samples from a large wholesaler of precious stones for the purposes of valuing the wholesaler's precious stones inventory. Derived formulae for the sample estimates and variances of the sample estimates. Consulted on appropriate sample sizes to obtain desired level of precision for the sample estimates. Programmed the sample design and calculation of sample estimates and variances using statistical software.

Developed economic analyses using multiple, large databases to evaluate competitive relationships between certain trade shows in the trade show industry. Determined whether certain trade shows detracted from the commercial success of other trade shows. Developed a survey and sampling methodology to collect relevant economic data. Developed approaches to determine the amount and degree of competitive overlap across various trade shows.

Provided expert testimony in a litigation related to the alleged devaluation of class members' Rewards points due to a change in the customer rewards program. Developed analyses to quantify the economic impact of the program change on class members' points. Evaluated the counterparty's damages claims of economic harm due to the breach of the program agreement.

Provided expert testimony in a litigation related to product liability in an automobile accident. Determined the diminished earning capacity of the injured party using economic and financial models to gauge potential lost earnings and benefits. Evaluated counterparty's damages claims and methodology to determine their reasonableness.

Developed economic analyses based on proprietary data, third-party research, and survey data to determine the amount of economic damages attributable to a larger product failure and product recall in the refrigerator industry. Evaluated the counterparty's analyses and damages claims of the economic harm due to the product failure and recall.

Conducted survey research to evaluate movie theater attendance patterns, reasons for going to movie theaters, the relative importance of these reasons in attending movies, and pricing information for movie theater products. Designed the survey questionnaire and sampling approach. Oversaw the data collection of both internet and in-person surveys. Conducted various statistical survey analyses.

Provided expert testimony in a litigation related to an alleged breach of contract in the commercial parking garage industry. Using advanced statistical models, determined the amount of lost garage parkers due to the alleged breach of contract. Evaluated counterparty's lost garage parker claims and methodology to determine their reasonableness.

Evaluated the survey conducted by a large survey research firm regarding farming methods and subsistence in third world countries in the context of a professional malpractice claim. Conducted analyses of survey methodology and survey data to determine whether the survey conformed to survey best practices and whether the survey likely suffered from bias.

Provided expert testimony in a product liability litigation in the fruit industry. Developed a multi-stage stratified sampling design used to select at random samples of fruit trees from the target population. Oversaw and led the collection of samples to be used by technical experts in their analyses. Derived formulae for the sample estimates and variances of the sample estimates. Consulted on appropriate sample sizes to obtain desired level of precision for the sample estimates.

Finance

Reverse engineered and analyzed an expert's 10(b)-5 damages model surrounding the quantification of financial losses by a class of the company's shareholders. Proposed possible adjustments to the model that would provide a more reliable estimate of damages. Developed a large database and the modeled daily stock prices and trader activity for a five-year period.

Conducted financial analyses of a trader's trading activity where it was alleged the trader late traded into and out of various mutual funds over approximately a three-year period. Constructed a large data base of every S&P futures transaction for approximately a six-year period and a large database of all of the trader's trades. Analyzed the trading activity of the trader using these databases. Developed econometric models based on this analysis to determine to what extent, if any, the trader late traded. Evaluated the econometric models provide by the counterparty alleging late trading.

Conducted and consulted on analyses of traders' and mutual employees trading activities in which simulation of trading activity was done following pre-specified trading rules to determine the total next-day net NAV return and the amount of dilution for trading within a given mutual fund. Analyzed and consulted on the comparison of simulation based on these pre-specified trading rules to litigants' trading activities as well as to baseline simulations where next-day net NAV return and the amount of dilution was determined from trading done on randomly determined trade days.

Provided expert testimony in a malpractice litigation concerning issues related to a company's reorganization of its debts. Conducted and evaluated various analyses, including event studies, to determine the effect information in the proxy statement for a bond offering, as well as other information available at that time, had on the litigant's bond prices.

Provided expert testimony in a bankruptcy litigation involving the valuation of PCS licenses in the wireless telephone industry. Evaluated econometric models used to value the PCS licenses by the counterparty's expert. Examined factors that impacted license value and determined appropriateness of the valuation models.

Conducted economic analyses to determine the likelihood of lending discrimination by a large finance company in the market for consumer automobile loans. Examined and developed large databases that included financing transactions between the large lender and individual borrowers. Developed sophisticated econometric models to determine whether evidence suggested lending decisions were made on the basis of inappropriate consumer characteristics.

Conducted economic analyses of various reasons for the magnitude and change in personal bankruptcy filings used for credit risk management and marketing analytics in the credit card industry. Developed statistical models based on various economic variables to explain and forecast personal bankruptcy filings. Developed forecasts of underlying primitive variables in the overall forecasting models.

Conducted survey research in a litigation in the private equity fund industry. Designed the survey questionnaire and sampling approach used to collect data. Analyzed data collected from the survey to examine investors' decision-making processes and which characteristics of private equity funds influence investors' decisions.

Evaluated the financial models developed by the counterparty's expert to value nuclear power plants and the potential synergies realized by fleet management of nuclear power plants.

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"Trademark Infringement Remedies." Dickinson Wright PLLC, October 2022.

"The Use of Surveys in IP Litigation." The Intellectual Property and Innovation American Inn of Court. January 2021.

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"Current Knowledge and Considerations Regarding Survey Refusals: Executive Summary of the AAPOR Task Force Report on Survey Refusals" with David Dutwin, John D. Loft, Jill E. Darling, Allyson L. Holbrook, Timothy P. Johnson, Ronald E. Langley, Paul J. Lavrakas, Kristen Olson, Emilia Peytcheva, Timothy Triplett, and Andrew Zukerberg. *Public Opinion Quarterly*, Volume 79, Number 2, Summer 2015, pp. 411-419.



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PROFESSIONAL AFFILIATIONS

American Economic Association

American Statistical Association

International Trademark Association

American Association of Public Opinion Research

Intellectual Property Owners Association

Licensing Executives Society

Exhibit 2



JEFFERY A. STEC, Ph.D.
BERKELEY RESEARCH GROUP, LLC
70 W. Madison Suite 5000 | Chicago, IL 60602

Direct: **312.429.7970**
jestec@thinkbrg.com

PREVIOUS TESTIMONY

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Jim S. Adler, P.C. et al. v. McNeil Consultants, LLC d/b/a Accident Injury Legal Center et al. Case No. 3:19-cv-02025-K-BN. United States District Court for the Northern District of Texas – Dallas Division. Rebuttal Expert Report, Deposition Testimony.

Guardant Health Inc. v. Natera, Inc. Case No. 3:21-cv-04062-EMC. United States District Court for the Northern District of California. Expert Report, Rebuttal Expert Report, Deposition Testimony.

In the Matter of Distribution of the 2014, 2015, 2016 and 2017 Cable Royalty Funds. No. 16-CRB-0009-CD (2014-2017). Copyright Royalty Judges. Rebuttal Written Testimony, Hearing Testimony.

Wenger S.A. v. Olivet International Inc. et al. Case No. 1:20-cv-01107-LGS. United States District Court for the Southern District of New York. Rebuttal Expert Reports, Deposition Testimony, Deposition Testimony.

Attila Csupo et al. v. Google LLC. Case No. 19-cv-352557. Superior Court of the State of California for the County of Santa Clara. Expert Report, Deposition Testimony.

M.P.T. Racing, Inc. d/b/a MPT Industries v. Brothers Research Corporation et al. Case No. 1:22-cv-00334 (CCE)(JEP). United States District Court for the Middle District of North Carolina. Expert Report, Rebuttal Expert Report, Deposition Testimony.

GOLO, LLC v. Goli Nutrition Inc. et al. Case No. 1:20-cv-00667-RGA. United States District Court for the District of Delaware. Rebuttal Expert Report, Deposition Testimony.

Newmark Partners, L.P. et al. v. Terrance David Hunt et al. Index No, 653292/2021. Supreme Court of the State of New York – County of New York. Expert Report, Deposition Testimony.

Daniel B. Abrahams v. Simplify Compliance, LLC. Case No. 1:19-cv-03009 (RDM). United States District Court for the District of Columbia. Rebuttal Expert Report.

Rex Real Estate Exchange, Inc. v. Zillow, Inc. et al. Case No. 2:21-cv-00312-TSZ. United States District Court for the Western District of Washington at Seattle. Rebuttal Expert Report, Deposition Testimony.

Exhibit 3

Nike, Inc., v. StockX, LLC
Exhibit 3
Documents Reviewed and/or Relied Upon

Bates Documents			
Beginning Bates	Ending Bates	Beginning Bates	Ending Bates
NKE000016	NKE000017	NKE0041300	NKE0041302
NKE000676	NKE000678	NKE0041350	NKE0041357
NKE000678	NKE000679	NKE0042395	NKE0042396
NKE0029087	NKE0029087	NKE0081471	NKE0081471
NKE0038817	NKE0038821	NKE0018453	STX0018499
NKE0038817	NKE0038821	STX0018799	STX0018840
NKE0039436	NKE0039436	STX0018799	STX0018840
NKE0039854	NKE0040066	STX0020225	STX0020268
NKE0041218	NKE0041218	STX0021481	STX0021498
NKE0041221	NKE0041226	STX0021868	STX0021951
NKE0041233	NKE0041233	STX0021868	STX0021951
NKE0041262	NKE0041265	STX0026651	STX0026760

Legal Filings

Answer to First Amended Complaint, dated June 6, 2022.
First Amended Complaint, filed May 25, 2022, in Civil Action No. 1:22-cv-000983-VEC.

Expert Reports

Expert Report of Catherine Tucker dated May 5, 2023.
Expert Report of Dr. Robert L. Vigil and Exhibit 5, May 5, 2023.
Expert Report of John L. Hansen and Attachments May 5, 2023.

Depositions

Deposition of Barbara Delli Cappini and Exhibits, taken January 10, 2023.
Deposition of Brock Huber and Exhibits, taken February 22, 2023.
Deposition of Jacob Fenon and Exhibits, taken December 2, 2022.
Deposition of Joe Pallett and Exhibits, taken February 8, 2023.
Deposition of John Lopez and Exhibits, taken February 23, 2023.
Deposition of Laura Rozza, taken February 1, 2023.
Deposition of Russell Arndson and Exhibits, taken November 30, 2022.

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Thomas, Bridgette. “The Retail Market for Shoes in the US Industry Report (OD6143).” IBISWorld, June 2021.
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Nike, Inc., v. StockX, LLC

Exhibit 3

Documents Reviewed and/or Relied Upon

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https://www.nike.com/launch?inside-stakes-bot-protection?cp=usns_aff_nike_content_PID_100029727_Skinlinks&cid=4942550&cjevent=804b13cfe211ed83d257cf0a82b836.
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Exhibit 4.0

Nike, Inc., v. StockX, LLC

Exhibit 4.0

Summary of Best Selling Shoe Review of Nike.com and StockX ⁽¹⁾

Nike Shoes Available for Sale on Nike.com ⁽²⁾

New & Upcoming Nike Shoes Not Yet Available for Sale on Nike.com ⁽³⁾

Shoe Availability from Nike.com's Best Selling Products		
Total Shoe Styles	Number of Sold Out Shoe Styles	Total Available Shoe Styles
102	0	102
16		

Shoe Availability from Nike.com's Best Selling Products on StockX			
Number of Shoe Styles	Shoe Styles Reviewed ⁽³⁾	Percentage of Styles With Overlapping Sizes	Overlapping Shoes Sold on StockX
71	102	69.6%	203,893
28	102	27.5%	38,374
58	102	56.9%	167,802

Number of Shoes with *Any Overlapping Sizes* Between Nike.com and StockX ⁽⁴⁾

Number of Shoes with *All Available Sizes Overlapping* Between Nike.com and StockX ⁽⁴⁾

Number of Shoes with *5 or More Overlapping Sizes* Between Nike.com and StockX ⁽⁴⁾

Notes:

- (1) See Nike.com/launch and StockX.com. Based on a review of the Best Selling shoes identified on Nike.com including its New & Upcoming Shoes (the Coming Soon items), and the Adult and Kids Best Selling shoes on June 1 & June 2, 2023, I reviewed the product availability of and tracked the sizes available where applicable for each shoe style on Nike.com and on StockX's platform to identify whether a given style was available on both platforms and whether the products were available in the the same overlapping sizes.
- (2) See Exhibit 5.0.
- (3) See Exhibit 5.1.
- (4) See Exhibit 4.1.

Exhibit 4.1

Nike, Inc., v. StockX, LLC

Notes:
(1) See Nike's Website for its New & Upcoming, Coming Soon Shoes and its Best Selling Shoes at <https://www.nike.com/w/best-shoes-3-runs-z616z76m50znklzy?ok>; and <https://www.nike.com/w/kids-best-shoes-76m50v4d4ery7ok>. See also, <https://www.nike.com/w/new-upcoming-drops-k-0gk>.

(2) See Exhibit 5.0.
(3) See Exhibit 6.0.
(4) See Exhibit 4.1.

Exhibit 4.2

Notes: See Exhibit 5.0 and Exhibit 6.0. "N" indicates the product was available in that size on Nike.com, but not on StockX. "S" indicates the product was available in that size on StockX, but not on Nike.com, and "P" indicates that the style was available in that size on both Nike.com and StockX website.

Exhibit 5.0

Nike, Inc., v. StockX, LLC
Exhibit 5.0
Best Selling Shoe Review of Nike.com and StockX - Available Shoe Styles on Nike.com⁽¹⁾

[illegible]

Note: (1) See Nike's Website for Adults and Kids at <https://www.nike.com/w/best-shoes-3aauvz5c1a6z76m50zmk1zy7o4z> and <https://www.nike.com/w/kids-best-shoes-76m50zvd4fny7o4z>. See also, the urls provided in the source column.

Nike, Inc., v. StockX, LLC
Exhibit 5.0
Best Selling Shoe Review of Nike.com and StockX - A Available Shoe Styles on Nike.com (1)

Note:
(1) See Nike's Website for its Best Selling Shoes for Adults and Kids at <https://www.nike.com/w/best-shoes-3ruuv5c1x6z76m50znk1zy7o1>.

Nike, Inc., v. StockX, LLC
Exhibit 5.0
Best Selling Shoe Review

Note:
(1) See Nike's Website for its Best Selling Shoes for Adults and Kids at <https://www.nike.com/w/best-sbo-es-3ruuv5c1x6z76m50zmik1zy7o1c>; a

Exhibit 5.1

Nike, Inc., v. StockX, LLC
 Exhibit 5.1
 Best Selling Shoe Review of Nike.com and StockX - Shoe Styles Not Yet Available on Nike.com (1)

Name	Colorway	Category	Style Number	Shoe Sizes	Retail Price	Current Price	Available?	Source	Number of Sizes Available
Air Jordan 5 Retro Low	Indigo Haze/Metallic Silver/Alabaster/Fire Red	New & Upcoming	FD563-500	Women's	\$180	\$180	Not Yet Available for Sale	https://www.nike.com/air-jordan-5-retro-low-womens-shoes-4dHPNPFJ4563-500	0
Air Jordan 3 Retro	White/Front Light Ash Grey/Black	New & Upcoming	DX6665-100	Big Kids	\$150	\$150	Not Yet Available for Sale	https://www.nike.com/air-jordan-3-retro-big-kids-shoes-4dRPTDX6665-100	0
Air Jordan 1 Retro High OG	White/Black/White/Black/White/Black	New & Upcoming	FD437-051	Big Kids	\$140	\$140	Not Yet Available for Sale	https://www.nike.com/air-jordan-1-retro-high-og-big-kids-shoes-4dRPTDX437-051	0
Air Jordan 1 Retro High OG	Black/White/Light Smoke Grey/Fire Red	New & Upcoming	DD1503-500	Women's	\$110	\$110	Not Yet Available for Sale	https://www.nike.com/air-jordan-1-retro-high-og-womens-shoes-CN8u4DD1503-500	0
Nike Dunk Low	Indigo Haze/Salt Coral/Chalk	New & Upcoming	FD707-131	Big Kids	\$95	\$95	Not Yet Available for Sale	https://www.nike.com/dunk-low-big-kids-shoes-gp9dceF7707-131	0
Nike Dunk Low	White/White/Phantom/Mint Foam	New & Upcoming	FD704-100	Big Kids	\$90	\$90	Not Yet Available for Sale	https://www.nike.com/dunk-low-big-kids-shoes-hpCtPpF704-100	0
Nike Dunk Low	White/Active Fuchsia	New & Upcoming	FD705-100	Little Kids	\$70	\$70	Not Yet Available for Sale	https://www.nike.com/dunk-low-little-kids-shoes-wfMAY0FD705-100	0
Nike Dunk Low Next Nature	Blue Whisper/Hyper Royal/Green Abyss/White	New & Upcoming	FD4668-400	Big Kids	\$90	\$90	Not Yet Available for Sale	https://www.nike.com/dunk-low-next-nature-big-kids-shoes-80Z20W/FJ4668-400	0
Nike Air Max 1 '86 OG G NRG	White/Green Strike/Pewter/Gridiron	New & Upcoming	DX8436-103	Men's	\$170	\$170	Not Yet Available for Sale	https://www.nike.com/air-max-1-86-og-g-ngs-mens-golf-shoes-48PQIGDX8436-103	0
Nike Dunk Low	White/Ice Blue/Phantom/Multi-Color	New & Upcoming	FD743-194	Women's	\$120	\$120	Not Yet Available for Sale	https://www.nike.com/dunk-low-womens-shoes-4dDITFE7743-194	0
Nike Dunk Low	Stadium Green/White/Black	New & Upcoming	FN3612-300	Men's	\$110	\$110	Not Yet Available for Sale	https://www.nike.com/dunk-low-mens-shoes-2KmB3iFN3612-300	0
Nike Dunk Low	Volt/White/Black	New & Upcoming	DX6666-701	Big Kids	\$95	\$95	Not Yet Available for Sale	https://www.nike.com/dunk-low-mens-shoes-p8D2gdDX6666-701	0
Air Jordan 1 Low SE	Black/White/Fire Red	New & Upcoming	55360-063	Big Kids	\$90	\$90	Not Yet Available for Sale	https://www.nike.com/air-jordan-1-low-se-big-kids-shoes-4Avx4455360-063	0
Air Jordan 1 Low	White/Front Light Ash Grey/Black	New & Upcoming	FB4415-100	Baby/Toddler	\$65	\$65	Not Yet Available for Sale	https://www.nike.com/jordan-3-retro-baby-toddler-shoes-qCw4FB4415-100	0
Air Jordan 3 Retro	White/Front Light Ash Grey/Black	New & Upcoming	FB4416-100	Little Kids	\$85	\$85	Not Yet Available for Sale	https://www.nike.com/jordan-3-retro-little-kids-shoes-KBaw3FB4416-100	0

Note:(1) See Nike's Website for its New & Upcoming, Coming Soon Shoes at <https://www.nike.com/new-upcoming-drops-40gk>. See also, the urls provided in the source column.

Exhibit 6.0

[illegible]

(1) After reviewing the bestselling shoe styles available on Nike.com, we reviewed StockX.com to identify if the shoe styles were also available on StockX. See <https://stockx.com/>. See also, the url's provided in the source column.

Nike, Inc., v. StockX LLC
Exhibit 6.0
Best Selling Shoe Review of Nike.com and StockX - Short Sales Available on StockX.com

[illegible]

Note: (1) After reviewing the best-selling shoe styles available on Nike.com, we reviewed StockX.com to identify if the shoe styles were also available on StockX. See <https://stockx.com/>. See also, the url's provided in the source column.

Wilder, Inc. v. StockX LLC

Note: 1) After reviewing the best-selling shoe styles available on Nike.com, we viewed StockX.com to identify if the shoe styles were also available on StockX. See <https://stockx.com/>. See also, the url's provided in the source column.

Exhibit 7

Google

Nike Air Force 1 '07

Shopping

Images

Lx

LV8

Black

SE

Next nature

Premium

Women

All filt

About 112,000,000 results (1.14 seconds)

See results about

Nike Women's Air Force 1 '07 Sneakers

Sponsored

Men's Nike Air Force 1 '07...
\$110.00
Scheels
★★★★★ (4k+)

SALE

Nike - Women's Air...
\$77.97 \$110
Nike
★★★★★ (25)

Women's Nike Air Force 1 '...
\$110.00
Scheels
★★★★★ (9k+)

Men's Nike Air Force 1 '07...
\$110.00
Scheels
★★★★★ (5k+)

SALE

Nike - Men's Air Force 1 '
\$87.97 \$110
Nike
★★★★★ (5)

Sponsored

Nike
https://www.nike.com › shop › af1

Shop Nike® Air Force 1 '07 - Nike® Just Do It

Shop exclusive new styles crafted with the latest Nike® technology & innovations now. The Nike® Air Force 1 '07. Classic construction, tough nature & built to last. Live Support Available. Free 60-Day Returns. Medical Workers Save 10% Shop...

Men's Air Force 1

Rep Iconic Air Force 1 Releases From The Men's AF1 Collection.

Women's Air Force 1

Embrace Your True Style With A Pair Of Women's Air Force 1.

Sale - Up To 40% Off

Shop All Our New Markdowns. Save On Signature Nike Styles.

Nike
https://www.nike.com › air-force-1-07-womens-shoes-...

Nike Air Force 1 '07 Women's Shoes. Nike.com

The legend lives on in this fresh, modern take on the iconic AF1. The low-cut silhouette lends a low-to-the-ground feel and versatile look.
★★★★★ Rating: 4.8 · 1,785 reviews · \$77.97 to \$110.00 · 60-day returns · In stock

https://www.nike.com › air-force-1-07-womens-shoes-...

Nike Air Force 1 '07 Women's Shoes. Nike.com

The radiance lives on in the Nike Air Force 1 '07. This b-ball original puts a fresh spin on what you know best: classic leather construction, bold details ...
★★★★★ Rating: 5 · 1 review · \$77.97 to \$110.00 · 60-day returns · In stock

https://www.nike.com › air-force-1-07-mens-shoes-jBr...

Nike Air Force 1 '07 Men's Shoes. Nike.com

Originally designed for performance hoops, the Nike Air cushioning adds lightweight, all-day comfort. The low-cut silhouette adds a clean ...

Nike Men's Air Force 1 '07...
★★★★★ (4.6K)

Details

Reviews

Size

Color

Typically \$110

Nike
Nike Men's Air Force 1 '07...
\$7 delivery May 26 – Jun 14
60-day returns

DICK'S Sporting Goods
Nike Men's Air Force 1 '07...
Free delivery
Free 60-day returns

Nordstrom
Nike Air Force 1 '07 Sneaker i...
Free delivery est. by Jun 8
Free lifetime returns

Amazon.com - Seller
Nike Men's Air Force 1 '07 An...
Free delivery

Finish Line
Nike Men's Air Force 1 Low...
Free delivery May 26 – 30
Free 45-day returns

→ Compare prices

Nike Air Force 1 '07 Men's Shoes nike.com · Manufacturer

The legend lives on in the Nike Air Force stays true to its roots with iconic AF-1 styl

https://www.google.com/search?q=Nike+Air+Force+1+%2707&rlz=1C1GCEU_enUS1034US1034&oq=Nike+Air+Force+1+%2707&aqs=chrome..69i5... 1/3

★★★★★ Rating: 4.8 · 3,557 reviews · \$110.00 · 60-day returns · In stock

People also ask


- Is there a difference between Air Force 1 and 07? ▼
- What does the 07 mean on Air Force Ones? ▼
- What is the difference between Air Force 1 07 craft? ▼
- Are Air Force 1 discontinued? ▼
- Feedback

Foot Locker

<https://www.footlocker.com> › category › shoes › air-f... ⋮

Nike Air Force 1


Results 1 - 48 of 187 — **Nike Air Force 1 '07** LEMen's•White/White\$110.00. Nike Air Force 1 Low - Boys' Grade School White/White. More Colors Available. Nike Air ...
45-day returns
[Nike Air Force 1 '07](#) LEMen's · [AF1](#) in men's sizing only · [Women's](#) · \$90.00

Amazon.com

<https://www.amazon.com> › nike-air-force-1-07 › k=ni... ⋮

Nike Air Force 1 07


Price and other details may vary based on product size and color. **Nike Men's Air Force 1 '07** An20 Basketball Shoe. Pinch to zoom-in further ...
30-day returns

Dick's Sporting Goods

<https://www.dickssportinggoods.com> › nike-mens-air-for... ⋮

Nike Men's Air Force 1 07 Shoes

\$129.99 Gridiron/Gridiron/Blk/Wht. Monarch/White. Timber Tan/Citrine Yellow · \$99.99 - \$109.99 Light Blue/White/White. **Nike AF1** White · See Price In Cart. Why ...
\$99.99 to \$129.99 · Free 60-day returns · In stock

Nordstrom

<https://www.nordstrom.com> › nike-air-force-1-07-sneake... ⋮

Nike Air Force 1 '07 Sneaker

Free shipping and returns on **Nike Air Force 1 '07** Sneaker at Nordstrom.com. Back-to-basics detailing keeps the look timeless on an '80s-throwback sneaker ...
★★★★★ Rating: 4.6 · 1,202 reviews · \$110.00 · Free delivery · Free lifetime returns · In stock

Hibbett

<https://www.hibbett.com> › Sneakers › Nike ⋮

Nike Air Force 1 Shoes & Sneakers



Shop from our collection of **Nike Air Force 1** Shoes and our other **Nike** brand shoes. Stylish and sturdy, these shoes are sure to last!
★★★★★ Rating: 4.7 · 1,511 reviews · Free delivery · Free 60-day returns

Air for all-day comfort and long-lasting we

Closure Style: Lace-up, Lacing

Department: Men's

Embellishment Style: Perforated

Material: Genuine Leather, Mesh, Polyes

[→ More details](#)

User reviews + W

4.7

★★★★★

4,585 reviews

5

4

3

2

1

Jasmine

★★★★★ 4 months ago

10/10 100% Recommend These Are Ama

This shoe is absolutely amazing and I rec them for my brother. He had a really beat these and he has been wearing them for years, so that obviously means these shc amazing quality. So, I decided it was time new pair for Christmas. I ... [More](#)

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